



The Dialoges
in English, betwene a
Dokter of Diuinity, and
a Student
in the lawes of England.
Newly corrected and
imprinted, with
new additi-
ons.

¶ Cum priuilegio ad impri-
mendum solum.

*A part in the church may belong to a
group by prescription. But not to
land*



The Dialogues

OF THE

ANCIENT GREEKS

AND

THEIR

MODERN

INTERPRETERS

AND

THEIR

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INTERPRETERS

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¶ Hereafter followeth the
first Dialogue in Englishe, betwixt a
Doctor of Diuinity, and a student in the lawes
of England, of the groundes of the saide
lawes, and of conscience, newly
corrected, and eftsones im-
printed with new
additions.

¶ The Introduction.



Doctour of diuinity that
was of great acquaintace
and famaliaritie with a
Student in the lawes of
England, sayd thus vnto
him, I haue had great
desire of longe tyme to
knowe whereuppon the
lawe of Englād is groun-

ded, but because the most part of the lawe of
Englande is written in the French tongue:
therefore I cannot through mine owne study
attaine to þ knowledge therof: for in þ tongue
I am nothinge expert. And becaule I haue
alwaies founde thee a faithful friend to me in al
my businesse: therefore I am bolde to come to
thee before any other to knowe thy minde, what
bee the very groundes of the lawe of England
as thou thinkest. Student. That woulde
aske a great leasure, and it is also aboue my
cunning to doe it. Neuerthelesse, that thou
shalt not thinke that I would wilfully refuse
to fulfil thy desire: I shall with good will doe
that

A. ij.

The first Chapter.

that in me is to satisfy thy minde: but I pray thee that thou wilt first shew me somewhat of other lawes that pertain most to this matter: and that Doctours treat of, howe lawes haue begonne. And then I will gladly shewe thee as me thinketh what be the grounds of the law of Englande. D. I will with good will dooe as thou sayest: wherefore thou shalt vnderstand that doctours treat of fower lawes, the which (as me semeth) pertaine most to this matter. The first is the lawe eternall. The seconde is the lawe of nature of reasonable creatures, the which as I haue heard say, is called by them that be learned in the law of England, the law of reason. The third is the lawe of God. The fourth is the law of man. And therefore I will first treat of the lawe eternall.

¶ Of the lawe eternall The first Chapter.

Like as there is in every artificer a reason of such thinges as are to be made by his craft: so likewise it behoueth that in every gouernor there bee reason and a foresight, in the gouerning of such thinges as shalbe ordered & done by him, to them that he hath the gouernance of, And forasmuch as almighty god is the creator & maker of al creatures, to the which he is compared as a workman to his works: And is also the gouernour of all deedes & mouings that be founde in any creature: Therefore as the reason of the wisdom of God (in asmuch as creatures be created by him) as the reason & foresight of al craftes and works that haue beene

The first Chapter.

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oz shal be. so the reason of the wisdom of God
mouing al things by wisdom made to a good
ende, obtaineth the name & reason of a lawe, &
that is called the lawe eternall.

And this lawe eternal is called the first law,
& it is well called the first, for it was before
al other lawes, & al other lawes be deriued of
it, whereupon saint Augustine sayeth in his
first booke of free arbitremēt, that in temporall
lawes, nothing is righteous ne lawfull, but
that the people haue deriued to the out of the
lawe eternal, wherefore euery man hath right
& title to haue that he hath righteously, of the
right wise iudgement of the first reaso, which
is the lawe eternal. S. But how may this lawe
eternal be knowen: for as the Apostle writeth
in the fift Chapter of his first Epistle to the
Corinthians. Que sunt dei nemo scit, nisi spiritus dei.
That is to say, no man knoweth what is in
God, but the spirit of God, wherefore it se-
meth that he openeth his mouth into heauen,
that attempteth to know it. D. This lawe e-
ternal no mā may know as it is in it self, but
onely blessed soules that see God face to face.
But almighty God of his goodnes leueth of
it asmuch to his creatures as is necessary for
thē, for els God shoulde bind his creatures to
a thing impossible: which may in no wise be
thought in hī. Therefore it is to be understād
that 3. maner waies almighty god maketh this
lawe eternal knowē to his creatures reasonable
first, by the light of natural reaso. Secōd, by
heauely reuelation. Thirdly, by the order of a

A. 19.

Prince

lawe of nature
is knowen
3 maner
of wayes

The first Chapiter.

Prince or any other secondary gouernor that hath power to bind his subiects to a law.

And when the law eternal or the will of God is knowen to his creatures reasonable by the light of natural vnderstanding, or by the lyght of natural reason, then it is called the lawe of reason. And when it is shewed by heauely reuelation in such manner as hereafter shal appere, then it is called the lawe of God. And when it is shewed vnto him by the order of a Prince or of any other secondary gouernour that hath a power to set a law vpon his subiects, the it is called the law of mā, though originally it be made of God. For lawes made by man that hath receyued thereto power of God, be made by God. Therefore the said thre lawes that is to say, the law of reason, the law of God, & the law of man, the which haue several names after the maner as they be shewed to man, be called in God, one law eternal.

And thus is the lawe of whō it is wrytten, *Prouerborum octauo*, where it is said, *Per me reges regnant, & legum conditores iusta discernunt*. That is to say, by me kings raigne, & makers of lawes discern the trouth. And this suffiseth for this time of the law eternal.

Of the lawe of reason, the which by doctors is called the lawe of nature of reasonable creatures.

The ij. Chapiter.

First

The second Chapter. 4

First it is to be vnderstande, that the lawe of nature may be considered in two manners, that is to say: generally & specially. When it is considered generally, then it is referred to all creatures, as well reasonable as unreasonable, for all unreasonable creatures lyue vnder a certaine rule to the geuen by nature necessary for them to the conseruation of their being, but of this lawe it is not our entent to treat at this time. The lawe of nature specially considered: which is also called the lawe of reason, pertaineth onely to creatures reasonable; that is man, which is created to the ymage of God.

And this lawe ought to be kept as well amonge Iewes, and Gentyles, as amonge Christian men. And this lawe is alway good and righteous, stirring and enclynge a man to good, and abhorring euill: and as to the ordering of the deedes of man it is preferred before the lawe of God. And it is written in the hart of euery man teaching him what is to be done & what is to be fled. And because it is written in the hart, therfore it may not be put away, ne it is neuer chaungeable by no diuersitie of place ne time. And therefore agaynst this lawe, prescriptyon, statute, nor custome, may not preuaile. And if any be brought in agaynst it, they be no prescriptyons, statutes nor Customes, but thinges boyde and against Justice. And all other lawes, as well the lawes of GOD as to the acts of men, as other be groundd thereupon.

Note

Aug.

S. Sith

The second Chapter.

S. With the lawe of reason is written in the hart of every mā, as thou hast said before, teaching him what is to be done, & what is to be fled, & the which thou saiest may never be put out of the hart: what needeth it the to have any other law brought in, to order the acts and deedes of the people. **D.** Though the lawe of reason may not be changed, nor wholly put away, nevertheless before the lawe written, it was greatly let & blinded by evil customes & by many sinnes of the people, besides the originall sinne: in so much that it might hardly be discerned what was righteous & what was unrighteous, & what was good and what evil: wherefore it is necessary for the good order of the people, to have many things added to the lawe of reason, as well by the Church as by secular Princes, accordynge to the maners of the countrey & of the people, where such additions shoulde be exercised. And this lawe of reason differeth from the lawe of God in two maners. For the lawe of God is given by revelation of God, & this lawe is given by a natural light of understanding. And also the lawe of god ordereth a man of it selfe by a right way to the felicity that ever shal endure. And the lawe of reason ordereth a mā to the felicity of this life. **S.** But what be the thinges that the lawe of reason teacheth to be done, and what to be fled? I pray thee shew me. **D.** The lawe of reason teacheth that good is to be loved, and evil is to be fled. Also that thou shalt doe to another, that thou wouldest an other shoulde doe to thee. And that wee may doe nothing

good to
evil fled

The second Chapiter.

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nothing against truth. And that a man must liue peacefully with other. That Justice is to be done to euery man, and also that wrong is not to be done to any mā. And that also a trespasser is worthe to be punished and such other, of the which follow diuers other secondary commaundments, the which be as necessary conclusions deriued of the first, as of that commaundment that good is to be beloued, it followeth that a man shall loue his benefactor, for a benefactor in that he is a benefactor, includeth in him a reason of goodnesse, for else he ought not to bee called a benefactor, that is to say, a good doer but an euil doer. And so in that he is a benefactor, he is to be beloued in al times, & in al places: And this lawe also suffereth many things to be done, as that it is lawfull to put away force with force. And that it is lawfull for euery man to defend himselfe & his goods against an vnlawful power. And this lawe rennereth with euery mans law, and also with the lawe of God, as to the deedes of man, and must be alwayes kept and obserued, and shall alway declare what ought to follow vpon the general rules of the lawe of man, and shall restraine them if they be in any thing contrary vnto it. And here is to be vnderstande, that after some men the lawe whereby al thinges were in common, was neuer of the lawe of reason, but onely in the time of extreme necessity. For they say that the lawe of reason may not be chaunged, but they say it is euident that the lawe whereby al thinges shoulde be in common is chaunged, wherefore

The thirde Chapiter.

foze they conclude that swas neuer the laswe
of reason.

¶ Of the laswe of God.

¶ The iij. Chapiter.

The lasw of God is a certeine lasw genen by
reuelation to a reasonable creature shewing
him the will of God, willing that creatures
reasonable be bounde to doe a thinge or not
to doe it, for obtaining of the felicity eternal.
And it is said for the obtaining of the felicity
eternal, to exclude the lawes shewed by reue-
lation of God for the political rule of the peo-
ple, the which be called Iudicials, for a lasw
is not properly called the lasw of God because
it was shewed by reuelation of God, but also
because it directeth a man by the nearest way
to the felicity eternal, as beene the lawes of
the olde Testament that beene called Mo-
rales, and the lawes of the Euangelistes, the
which were shewed in much more excellent
manner, then the laswe of the olde Testament
was: for that was shewed by the mediation
of an Angell. But the laswe of the Euan-
gelistes was shewed by the mediation of our
Lord Iesu Christ God and man, & the laswe
of god is alway righteous & iust, for it is made
and genen after the wil of god. And therefo-
al acts & doedes of mā, be called righteous and
iust when they be done accordyng to the laswe
of god & be conformable to it. Also sometime
laswe

made by man is called the lawe of God. As
 when a law taketh his principall ground by=
 pon the law of god, & is made for the declara=
 tion or conseruation of the faith, and to put a=
 way heresies, as diuers lawes Canons, & also
 diuers lawes made by the comon people som=
 time doe. The which therefore are rather to be
 called the lawe of God then the law of man.
 Yet neuerthelesse, al the lawes Cannon be not
 the lawes of god. For many of them bee made
 onely for the political rule and conseruation of
 the people, whereuppon John Gerson in the
 treatise of the spiritual life of the soule, the se=
 cond Lesson, & the third Corozally, saith thus.
 Al the Canons of Bpshops nor their decrees
 be not the lawe of god. For many of them bee
 made onely for the polyticall conuersation of
 the people. And if any man wil say: Be not all
 the goods of the church spiritual: for they bee=
 long vnto the spiritualty & leade to the spiry=
 tualty: we aunswere: That in the whole po=
 litical conuersatiō of the people, there be some
 specially deputed & dedicate to the seruice of
 God, the which most specially (as by an excel=
 lency) are called spiritual men as religious mē
 are. And other though they walke in the way
 of God, yet neuerthelesse, because their of=
 fice is most specially to bee occupied about
 such thynges as pertayne to the common
 wealth, and to the good ordre of the people,
 they bee therefore called secular menne or
 laye men. Neuerthelesse, the gooddes of
 the firste may yd more bee called spirituall,
 then

The thirde Chapiter.

then the goodes of the other, for they be things
mere temporal & keeping the body as they doe
in the other. And by lyke reason lawes made
for the politicall order of the Church, be cal-
led many times spiritual or the lawes of God.
Nevertheless, it is but improperly. And o-
ther be called civil or the lawes of man. And in
this point many be oft times deceiued, & also
deceiue other, the which iudge the thinges to
be spiritual, the which al men know be things
material and carnall. These be the wordes of
John Gerson in the place alleaged befoze.
Furthermore, beside the lawe of reason & the
lawe of man, it was necessary to haue the law
of God for former reasons. The first because
man is ordeyned to the end of the eternal fel-
city the which exceedeth the proportion & fa-
cultie of mans power: Therefore it was ne-
cessary that beside the lawe of reason and the
lawe of man: he shoulde be directed to his ende
by a lawe made of God, Secod, forasmuch as
for the vncertenty of mans iudgement, speci-
ally of things peculier and seldome fallinge, it
happeneth oft times to folloewe diuers iudge-
ments of diuers men, and diuersities of lawes,
and therefore to the entent that a man with-
out any doubt may knowe what hee should do
and what he shoulde not doe: It was necessa-
ry that he shoulde be direced in al his deedes
by a lawe heavenly geuen by God, the which
is so apparant that no man may swaue from
it, as is the lawe of God. Thirldy, man may
onely make a lawe of such thinges as he may
iudge

*8 laws of god
not on man
for 4 reasons*

The fourth Chapter. 7

Iudge vpon, and the iudgement of man may not be of inward things, but onely of outward things, and neuerthelesse it belongeth to perfection that a man be well ordred in both, that is to say, as well inward as outward. Therfore it was necessary to haue the lawe of God, the which should order a man as well of inward things as of outward things. The fourth is, because as saynte Augustine saith in the first booke of free arbitement, the lawe of man may not punish all offences: for if all offences should bee punished, the comon wealth should be hurt as is of contracts. For it cannot bee auoyded, but that as long as contracts be suffered, many offences shal folloiw thereby, & yet they be suffered for the comon wealth. And theretore that no euill should be vnpunished, it was necessary to haue the lawe of God that should leaue no euill vnpunished.

¶ Of the lawe of man. The iij. Chapter.

The lawe of man the which sometime is called the lawe positive, is deriued by reason as a thing which is necessarily & probably following of the lawe of reason, and of the lawe of god. And that is called probable that appeareth to many, and specially to wise men, to be true. And therfore in euery lawe positive wel made, is some what of the lawe of reason, and of the lawe of God, and to discerne the lawe of God & the lawe of reason from the lawe positive, is very hard. And though it bee hard, yet it is
much

The fourth Chapter.

much necessary in euery morall doctrine, and in
in all lawes made for the comon wealth, And
that the lawe of man bee iust & rightwise, two
thinges be necessary, that is to say, wisdom &
aucthority, wisdom, that hee may iudge after
reason what is to be done for the comminalty,
and what is expedient for a peaceable couersa-
tion, & necessary sustentation of them. Auctho-
rity, that hee haue aucthority to make lawes.
For the law is named of Ligare: that is to say,
to binde. But the sentence of a wise man doth
not bynd the cominalty, if he haue no rule ouer
them. Also to euery good law be required those
propties, that is to say, that it be honest, right-
wise, possible in it selfe, and (after the custom of
the countrey) couenient for the place and time,
necessary, profitable, & also manifest, that it bee
not captious by any darke sentence, ne mixt
with any priuate wealth, but all made for the
comon wealth. And after saint Briget, in the
fourth booke in the Cxxix. Chapter, euery
good law is ordeined to the health of the soule,
and to the fulfilling of the lawes of God: and
to enduce the people to ffly euill desires, and
to doe good workes. Also as the Cardinall
of Camerer writeth: whatsoeuer is righteous
in the lawe of man, is righteous in the lawe of
God, for euery mans lawe must bee consonant
to the lawe of God. And therefore the lawes
of princes, the commaundementes of prelates,
the statutes of comminalties, ne yet the ordi-
nauce of the Church is not righteous nor ob-
ligatory, but it be consonant to the law of God,
And

wisdom &
aucthority
necessary

The fourth Chapter. 8

And of such a lawe of man that is consonant to the lawe of god, it appeareth who hath right to lands and goods, and who not: for whatsoeuer a man hath by such lawes of man, he hath righteously. And whatsoeuer is had against such lawes, is vnrightheously had.

For lawes of man not contrary to the lawe of God, nor to the lawe of reason, must be obserued in the lawe of the soule: and hee that despiseth them, despiseth God, and resisteth god. And furthermore as Gracian saith, becaule euill men feare to offend for feare of paine. Therefore it was necessary that diuers paynes should be ordeined for diuers offences, as Physitions ordeined diuers remedies for seuerall diseases. And such paines be ordeined by the makers of lawes after the necessity of the time, and after the disposition of the people. And though that lawe that ordeined such paines hath thereby a conformity to the lawe of God (for the lawe of God commaundeth that the people shal take away euill from amonge them selues) yet they belonge not so much to the lawe of God, but that other paines standinge the firste principles might be ordeined and appointed, therefore that is the lawe that is called most properly the lawe positiue, and the lawe of man.

And the Philosopher said in the third booke of his Ethikes, that the entent of a maker of a Lawe is to make the people good, & to bring them to vertue. And though I haue some-what in a general shewed the whereupon the lawe

The fifte Chapter.

lawe of England is grounded. For of necessitie it must be grounded of the sayd lawes, that is to say of the lawe eternal, of the lawe of reason and of the lawe of God. Nevertheless, I put thee thewe me moze specially whereupon it is grounded as thou thinkest, as thou before has promised to me.

S. I will with good will doe therein that lieth in mee, for thou hast shewed mee a right plaine, and straight way thereto. Therefore thou shalt vnderstand that the lawe of England is grounded vpon five principall grounds. First it is grounded on the lawe of reason. Secondly on the lawe of God. Thirdly, on diuers generall customes of the Realme. Fourthly, of diuers principles that be called Maximes, Fifthly, on diuers particuler customes. Sixtly, on diuers statutes made in Parliaments by the king and by the common counsell of the realme. Of which grounds I shall speake by order as they be rehearsed before, and first of the lawe of reason.

¶ Of the first ground of the lawe of Englande.

The v. Chapter.

The first ground of the lawe of Englande is the lawe of reason, whereof thou hast treated before in the second chapter, the which is kept in this realme as it is in all other realmes as of necessitie it must needs be as thou has sayd before. ¶ But I would knowe what is called the lawe of Nature after the lawes of England

y. 6. principall
groundes of
the lawe of Eng-
lande.

The fift Chapter.

9

England. S. It is not vled among them that be learned in the lawes of England to reason what thing is commaunded or prohibited by the law of nature, & what not, but al the reasoning in that behalf is vnder this manner, as whē any thing is grounded vpon the law of nature, they say that reason wil that such a thinge bee done & if it be prohibited by the law of nature, they say it is against reason or that reason wil not suffer that it be done. D. When I pray thee shewe mee what they that bee learned in the lawes of the realme hold to be commaunded or prohibited by the lawes of nature, vnder such termes & after such manner as is vled amongst them that bee learned in the said lawes.

S. Ther be put by them that be learned in the lawes of England two degrees of the lawe of reason, that is to say, the law of reason primary, & the law of reason, secundary, by the law of reason primary bee prohibited in the lawes of England, murder, that is the death of him that is innocent, perjury, disceite, breakinge of the peace, & many other like. And by the same law also it is lawfull for a man to defend himselfe against an vniust power so he keepe due circumstance. And also if any promise bee made by man as to the body it is by the law of reason vltra in the lawes of England. The other is called the law of secundary reason, the which is diuided into two branches, that is to say, into the lawes of a secundary reason generall & into a lawe of secundary reason particular. The law of a secundary reason generall is grounded and derpyed of the generall lawe, or generall custome

B. i.

custome

2 Degrees of
1st Law of
Reason namely
20 for primary
and Boundary

Boundary
is for diuided
into 2 Reasons

The fift Chapter.

custom of property, wherby goods moueable & vn moueable be brought into a certayn property so that every man may know his owne thing. And by this braunch be prohibited in y^e lawes of England disseisons, trespassse in Lands and goods, rescusse, theft, vnlawful withholding of an other mans goods & such other. And by the same law it is a ground in the lawes of England that satisfactioun must bee made for a trespassse, and that restitutio must be made of such goods as one man hath that belong to an other man, the debts must be paid, covenants fulfilled, and such other. And because disseisons, trespassse in landes and goods, theft, and such other had not bene knownen, if the lawe of property had not bene ordeined: Therefore all thinges that bee deriued by reason out of the sayd law of property, be called the law of reason secundary general, for the lawe of property is generally kept in al our countries. The lawe of reason secundary particuler, is y^e law that is deriued bypon diuers customes generall and particuler, and of diuers maximes and statutes ordeined in this realme. And it is called y^e law of reason secundary particuler, because the reason in y^e case is deriued of such a law y^e is only holden for lawe in this realme, and in none other realme.

¶ Addition.

D. I pray thee shew me soe special case of such law of reason secundary particuler for an example. S. There is a law in Englande, which is a law of custom y^e if a man take a distresse lawfully, that he shal put it in a ponde ouert, there to

The fift Chapter.

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to remaine til he be satisfied of y^e hee distrained
for. And the thereupon may be asked this que-
stion, that if the beasts die in p^ound for lacke of
meat, at whose peril die they, whether die they
at the perill of him y^e distrained, or of him that
oweth the beasts? D. If the lawe bee as thou
sayest & that a man for a iust cause taketh a dis-
tresse & putteth it in the pound ouerte, and no
lawe compelleth him that distraineth to geue
them meat, then it seemeth of reason that if the
distresse die in p^ound for lacke of meat, y^e it died
at the peril of him that oweth the beasts, & not
of him y^e distrained, for in him that distrained
there can be assigned no default, but in y^e other
may be assigned a default, because the ret was
unpayde. S. Thou hast geuen a true iudge-
ment, and who hath taught thee to doe so, but
reason deuied of the said general custom. And
the lawe is so full of such secundary reasons re-
riued out of the general customes and maximes
of the realme, that some me haue affirmed that
al the lawe of the realme, is the lawe of reason,
but y^e cannot be proued as me seemeth, as I haue
partly shewed before & more fully will shewe
after. And it is not much v^oled in the lawes of
Englande, to reason what lawe is grounded
vpon the lawe of the first reason primary, or
of the lawe of reason secundary, for they bee
most commonly openly known of them selues,
but for the knowledge of the lawe of reason se-
condary is greater difficultie, & therefore there
in dependeth much the maner and forme of ar-
guments in the lawes of England.

Note for
adistressed
put in p^ound
on dist.

W. ij.

And

The vij. Chapter.

And it is to bee noted that all the deriuing of reason in the lawes of England proceedeth of the first principals of the law or of some thing that is deriued of them. And therefore no man may right wisely iudge ne groundly reason in the lawes of England, if hee bee ignorant in the first principals. Also al birds, fowles, wilde beastes of forrests and warren, & such other be excepted by the lawes of Englande out of the said generall lawe & custome of property. For by the lawes of the realme no property may be of the in any person, vnlesse they be tame. Neuerthelesse the egges of Hawks, herons, or such other as builde in the ground of any person be adiudged by the sayd lawes to belong to him that oweth the grounde.

¶ Of the second ground of the lawe of England. The vij. Chapter.

The seconde ground of the lawe of England is the law of God, & therfore for punishmet of them that offende against the law of God, it is enquired in many courtes in this realme, if any hold any opinions secretly or in any other maner against the true catholik faith. And also if any general custome were directly against the law of god, or if any statut were made directly against it, as if it were ordeined that no almes should bee geuen for no necessity, the custome & statut were boide. Neuertheles & statut made in the xxij. pere of king Edward the ij. wherby it is ordeined that no mā vnder paine of imprisonment shal geue any almesse to any valiat beg-

no more
by of bird
and wild
beastes

to find
out up
ground

Secret op-
inions

we almes
upon
by no
will

beggers that may sweel labour, that they may
 so be compelled to labour for their living, is a
 good statute, for it obserueth the intent of the
 law of God. And also by authoritie of this
 law there is a ground in the lawes of Eng-
 land, that he that is accursed shal maintain no
 action in the kings court, except it be in verpe
 few cases, so that the same excommunication be
 certified before the kings Iustices in such ma-
 ner as the law of the Realme hath appointed.
 And by the authority also of this ground, the
 law of England admitteth the spiritual iuris-
 diction of bilmes & offerings. And of all other
 things that of right belog vnto it. And recey-
 ueth also al lawes of the church duly made, &
 that exceed not the power of the that made the
 In somuch in many cases it becometh the kings
 Iustices to iudge after the lawes of the church
 D. How may that be, that the kings Iustices
 should iudge in the kings courts after the law
 of the church, for it seemeth that the Church
 should rather giue iudgemēt in such things as
 it may make lawes of, the the kings Iustices.
 S. That may be doe in many cases wherof I
 shal for an example put this case. If a writ of
 right of ward be brought of the body &c. And
 the tenēt cōfessing the tenure, & the nonage of
 the infant, sayth that the infāt was married in
 his aūcesters daies &c. whereupon xij. men be
 swoyne which geue this verdit, that the infāt
 was married in the life of his aūcestour, And
 that the woman in the life of his aūcestour
 sued a deporce whereupon sentēce was geuen
 that they shoulde be deuoried, And that the
 B. ij. heire

valiant begger
 & not a lund

He got is at
 with flat
 may stand
 not action in
 & being count

nonfessing
 & somer

& woman sued

The vj. Chapter.

heire appeled, which hangeth yet vndiscussed
 praying the aide of the iustice to know whe-
 ther the infat in this case shalbe said married or
 no. In this case if the laswe of the church be p
 the said sentence of diuorice standeth in his
 strength & vertue vntil it be adnulled vpo the
 said appele. That the infat at the death of hys
ancestour was vnmarrled because the first mar-
riage was adnitted by p diuorice. And if the
 lawe of the church be that the letence of the de-
 uorice standeth not in effect til it be affirmed vpon
 the said appele, then is the infant yet ma-
 ried, so that the value of this marriage cannot
 belong vnto the lozd. And therfore in this case
 iudgement conditionel shalbe geue &c. And in
 like wyse the kinges Justices in many other
 cases shal iudge after the laswe of the Church
 like as p spirituall iudges must in many cases
 forme their iudgement after the kings lawes.
 D. How may that be, that the spirituall iud-
 ges should iudge after p kings lawes. I pray
 thee shewe me some certaine case thereof. S.
 Though it be somewhat a digression from our
 first purpose, yet I will not withsay thy de-
 sire, but wil with good will put thee a case of
 two thereof, p thou maist the better perceiue
 what I meane. If A. & B. haue goods jointly
 and A. by his last will bequethe hys portyon
 therein to C. & maketh the said B. his execu-
 tor & dyeth, & C. asketh the execution of thys
 will in the spirituall court: In this case p iud-
 ges there be bounde to iudge that will to be
 hold because it is hold by p lawes of p realme.
 And in likewise if a man be outlawed, & after
 by

*Spiritual
 Iudges should
 iudge after
 the Kings
 lawes*

Nota

by his wil bequeth certaine goods to John at
 Stile, & make his executors & die, & king ley-
 seth the goods & after geueth them again to
 executors, & after John at Stile sueth a cita-
 tion out of the spiritual court against the exe-
 cutors, to haue execution of his wil, in this case
 the iudges of the spiritual court must iudge his
 wil to be hold, as the law of the realme is that
 it is. And yet there is no such lawe of forsay-
 ture of goods by outlary in his spiritual law.

**¶ Of the thirde ground of the lawe of
 England. The vij. Chapter.**

The third ground of the lawe of Englande
 standeth vpon diuers generall customes of
 old time vsed through al his realme, which haue
 bene accepted & approued by our Soueraigne
 lord his king & his progenitours, & al their sub-
 iectes. And because the said customes be ney-
 ther against his law of god, nor the law of rea-
 son, & haue bene alway taken to be good & ne-
 cessary for the comon wealth of al the realme:
 Therefore they haue obtained the strength of a
 lawe in so much that he that doth against the, doth
 against iustice. And these bee his customes & pro-
 perly be called the comon law. And it shal al-
 way be determined by the Iustices whether
 there be any such general custome or not, & not
 by xij. men. And of these generall customes & of
 certein principles that be called maximes which
 also take effect by the old custome of the realme,
 (as shal appere in his chap. next following) de-
 pendeth most part of the lawe of this realme.

B. iij..

And

The vij. Chapiter.

*I find that
cause altho
customs
of y^e realm
to be observed*

And therefore our soueraigne lord the king at his coronation among other things taketh a sollempne othe, that he shal cause al the customes of his Realme faithfully to be obserued. D. I pray thee shew me some of these generall customes. S. I wil with good wil & first I shall shewe thee how the custome of the Realme is the very ground of diuers courts in the Realme, that is to say of the Chawncery, of the kings bench, of the common place, & the Eschequer, the which be courtes of recorde, because none may sit as iudges in those courts but by the kings letters patents. And these courtes haue diuers auctorities, whereof it is not to treat at this time. Other courts there be also only grounded by the custome of the realme, that be of much lesse auctority then the courts before rehearsed, as in euery shire within the realme, there is a court that is called the county, & an other that is called the sherifes tozne, & in euery maner is a court that is called a court Baron. And to euery faire & market is incident a court that is called a court of Hipowoders. And though in soe statutes is made mention sometime of the said courts, yet neuerthelesse of the first institution of the said courts, & that such courts should be, there is no statute nor lawe written in the lawes of Englande. And so al the ground & beginning of the sayd courts depend vpon the custome of the realme, the which custome is of so high auctority, that the said courtes ne their auctorities may not be altered, ne their names chaunged without Parliament.

Also

¶ Also by the old custōe of the realme no mā shalbe taken, imprisoned, disseised, nor otherwise distressed, but he be put to answer by the law of the lād, & this custōe is cōfirmed by the statute of Magna charta the xxvj. chap.

custome confirmed

¶ Also by the old custōe of the realme al mē great & smale shal doe & receive Justice in the kings courts, & this custome is confirmed by the statute of Mar. i. chapter.

¶ Also by the old custome of the realme, the eldest sonne is onely heire to his aūcestor, & if there be no sonnes but daughters, then al the daughters shalbe heires, & so it is of sisters & other kinswome. And if there be neither sōne, daughter brother, nor sister, thē shal the inheritance disceind to the next kinsman or kinswome of the whole blood to him that had the inheritance of howe many degrees soeuer they be from him. And if there be no heire generall nor special the the lād shal eschete to the Lord of whom the land is holden.

no sonne nor daughter

¶ Also by the old custōe of the realme lāds shal neuer ascend, or disceind, from the sonne to the father or mother, nor to any other aūcestor in the right lyne, but it shal rather eschete to the lord of the fee.

ascend or disceind

¶ Also if any alien haue a sonne that is an alien & after is made Denizen and hath another sonne and after purchaseth landes and dyeth, the yonger son shal inherite as heire & not the eldest.

alien not

¶ Also if there be thre brethre & the middelst brother purchase landes and dyeth wythout heire of his body, the eldest brother shal inherit as

not

The vij. Chapter.

as heire to him, & not the yonger brother.

¶ Also if land in fee simple discende to a man by the part of his father, & he dieth wythout heire of his body, then the inheritance shal discend to the next heire of the part of his father. And if there be no such heire of the part of his father, the if the father purchased the lands it shal go to the next heire of the fathers mother & not to the next heire of p sonnes mother, but it shal rather escheat to the lord of the fee, but if a man purchas lāds to him & to his heires, & die without heire of his body, as is sayd before, then the land shal discēd to the next heire of the part of his father if there be any, and if not, then to the next heire of the part of hys mother.

¶ Also the sonne purchaseth lāds in fee and die without heire of his body, the lande shall discēd to his vncle, & shal not ascend to his father, but if the father haue a sōne though it be many yeres after the death of p elder brother, yet that sōne shal put out his vncle & shal enjoy the land as heire to his elder brother for ever.

¶ Also by the custōe of the realme the childe p is borne before espousels is bastarde, & shal not inherite.

¶ Also the custūe of p realme is p no manner of goods nor cattels real nor personal shal neeer go to p heire, but to p executors, or to p ordinary or administratours. Also the husbāde shal haue al the chattels personels p his wyfe had at the time of the espousels or after, & also chattels real if he ouer liue his wyfe, but if he sell

*no gift
found & 40p*

*will
not go
farther*

*bastards
shal not
inherit*

*husbands
shal not
give to go
forward*

The vij. Chapter.

14

sell or geue away the chatels reals & die, by ^{the} sale or gift, the interest of the wife is determined & els they shal remain to ^{the} wife if she ouerliue her husband, also the husband shal haue al the inheritance of his wife wherof he was seised in deede in the right of his wife during the espousels in fee or in fee taile general, for tme of life, if he haue any child by her to hold as tenant by the curtesie of Englad & the wife shal haue the third part of the inheritace of her husband wherof he was seised in deede or in law after the espousels &c. but in that case the wife at the death of her husband must be of the age of nyne yeare or aboue or els shee shall haue no dowry. W. what if the husband at his death be wīn the age of ix. yerres. S. I suppose shee shal yet haue her dowry. Also ^{the} old law & custome of the realme is, ^{that} after ^{the} death of euery tenat ^{that} holdeth his lands by knights seruice, the lord shal haue the warde & mariage of the heire, til the heire cōe to the age of xxi. yere, & if the heire in that case be of ful age at the death of his aūcestor, thē he shal pay to his lord hys reliefe, which at the cōmon law was not certaine, but by the statut of Mag. char. it is put in certen, ^{that} is to say, for euery whole knights fee to pay $\text{£} .s.$ And for a whole barony to pay a $\text{£} .marke$ for reliefe, & for a whole ereldome to pay a $\text{£} .li.$ & after the rate, & if the heire of such a tenant be a womā, & she at the death of her aūcestor be wīn thage of xiiij. yerres, thē by the cōmon law she should haue bē in ward on-ly til xiiij. yere, but by the statute of Westmūn in such case she shalbe in warde til xvi. yere. And

if the interest of the wife is determined by sale or gift

Curtesy of Eng-land

not dower under 9 years of age

relief given

women not 14 years

The vij. Chapter.

And if at the death of her auncester she be of the age of 14. yere or above, she shal be out of ward though the lands be holden of the king, & then she shal pay reliefe as an heire male shal.

¶ Also of lands holden in socage, if the auncester die, his heire being within the age of 14 yeres, the next friend of the heire to whom the inheritance may not descēd shal haue the ward of his body & lands, til he shal cōe to the age of xiiij. yere, & then he may enter. And when the heire cometh to the age of xxi. yere, the the garden shal yeld him accompt for the profits therof by him receiued.

¶ Also such an heire in socage for his reliefe shal double his rent to the Lord the yere following the death of his auncester, as if his auncester held by xij. d. rent, the heire in the yere following shal pay the xij. d. for his rent, & o-ther xij. d. for his reliefe, & the reliefe he must pay though he be within age at the death of his auncester.

¶ Also ther is an olde lawe & custōe in this realme, that a freehold by way of feoffment, gift, or lease, passeth not, without livery of seisiō be made vpon the lād according, though a deede of feoffment be thereof made & deliuered: but by way of surrender, partition & eschaunge, a free hold may passe without livery.

¶ Also if a mā make a swil of lād whereof he is seyled in his demesne as of fee, that swil is void, but if it had stād in feoffers hāds, it had bene good. And also in tōdō such a swil is good by the custome of the city if it be inroswled.

¶ Also a lease for tme of yers is but a chattel by the

Note

warden in
Prage of fel
wōds about

to some for
a wife fel
double the
rent of
ward on
Bquest

nor freehold
passeth out
livery of
possession by
feoffment gift
or lease

Note

the lawe, & therefore it may passe without any livery of seiso, but otherwile it is of a state for fine of life for that is a freehold in the lawe: & therefore livery must be made or els the freehold passeth not.

Also by the olde custome of the realme, a man may distress for a rent service of comon right. And also for a ret reserved vpon a gift in taile, a lease for terme of life, of years, & at wil, & in such case the Lord may distresse the beasts of tenants, as lone as they come vpon the ground, but the beasts of straungers that come in but by maner of an escape, he may not distress til they haue bene leuant & couchant vpon the ground: but for debt vpon an obligation, nor vpon a contract, nor for accopt ne yet for arerages of accopt, nor for no maner of trespass, reparations, nor such other, no man may distresse.

Also by the olde custome of the realme all issues that shalbe toynd betwixt party & party in any court of record within the realme, except a fewe whereof it needeth not to treat at this time, must be tried by xij. free & lawfull men of the visne that be not of affinity to none of the parties. And in other courts that be not of record, as in the countie court barre, hundred & such other like, they shalbe tried by the othe of the parties, & not otherwile, but if the parties assent that it shalbe tried by the homage. And it is to be noted that lordes, barons, & all piens of the realme be excepted out of such trialls if they wil, but if they wil lawfully be shogone therein, some say it is no error. And they may if they wil haue a writ out of the chancery directed

disseisin

disseisin lawfull

*disseisin on law
full*

The vij. Chapter.

rected to the shiriffe cōmaunding him y^e he shall not impanel them vpon no enqueit. And of this that is said before it appereth y^e the customes aforesaid noz other like vnto the, wherof be verry many in the lawes of Englad, canot be proued to haue the strength of a law only by reason, for how may it be proued by reason that y^e eldest sonne shall only inherite his father, & the yonger to haue no part, or that the husband shall haue the whole land for terme of his life as tenat by the curtesy in such maner as before appereth: And that the wife shall haue onely the third part in the name of her dower, & that the husband shall haue all the goods of his wife as his owne. And that if hee die liuing the wife that his executors shall haue the goods, & not the wife. All these & such other cannot bee proued only by reason that it should bee so and no otherwise, although they be reasonable, & that with the custome therein vsed suffiseth in the lawe. And a statute made against such general customes ought to be obserued, because they be not merely the law of reason.

¶ Also the law of property is not the law of reason, but a law of custom, how be it that it is kept, and is also right necessary to be kept in all realmes and among all people. And so it may be numbred among the geneneral customes of the realme. And it is to vnderstand that there is no statute y^e treateth of the beginning of the sayd customes: ne why they should be holden for law. And therefore after them y^e be learned in y^e lawes of the realme, y^e old custom of the realme is the only

*not only by
reason*

*executors
shall have
yd goods and
not yd wife*

only & sufficient authority to the in that behalf,
 And I pray thee shew me what doctours hold
 therein, that is to say, whether a custome only be
 sufficient authority of any lawe. D. Doctors
 hold y^e a lawe grounded vpon a custome is the
 most surest lawe, but this y^e must alwayes vn-
 derstand therewith, y^e such a custome is neither
 contrary to the lawe of reason, nor to the lawe of
 god. And now I pray thee shew me somewhat
 of y^e maximes of the lawe of Englande whereof
 thou hast made mention befoze in the iij. chapt.
 S. I will with good will.

The iij. ground of the lawe of
 England. The viij. Chapter.

The iij. ground of the lawe of England stand-
 deth in diuers principles that bee called in y^e
 lawe, maximes, the which haue bene alwayes
 taken for lawe in this realme, so that it is not
 laweful for any that is learned, to deny them
 for euery one of those maximes is sufficient auc-
 thority to himselfe. And which is a maxime, &
 which not, shal alway be determined by y^e iud-
 ges, & not by xij. men. And it nedeth not to as-
 signe any reason, why they were first receiued
 for maximes, for it sufficeth that they be not a-
 gainst the lawe of reason, nor the lawe of God,
 and that they haue alway ben taken for a lawe.
 And such maximes be not only holde for lawe,
 but also other cases like vnto them, & al thingz
 that necessarily foloweth vpon the same, are to
 be reduced to the like lawe, and therefore most
 commonly there bee assigned some reasons or
 con-

The viij. Chapter.

consideration why such maxims be reasonable, to the entent that other cases like may the more conveniently be applied to them. And they be of the same strength & effect in the law as statutes bee. And though the generall custome of the realme, be the strength and warrant of the sayd maxims as they bee of the generall customes of the realme, yet because the sayd general customes be in maner knowen throughe the realme as well to them that bee vnlerned as learned, and may lightly be had and knowen, and that with little study. And the maxims bee onely knowen in the kinges courtes, or among them that take great study in the law of the realme, and among few other persons. Therefore they bee set in this writing for severall groundes & he that listeth may so accompt them, or if hee will hee may take them for en groundes, after his pleasure, of which maxims I shal hereafter shew thee part.

First ther is a maxime that escuage uncertein maketh knights service.

Also there is another maxime that escuage certaine maketh socage.

Also that he that holdeth by castel garde, holdeth by knights service, but he holdeth not by escuage. And that he that holdeth by xx. s. to the garde of a castell holdeth by socage.

Also there is a maxime that a disseint taketh away an entrie.

Also that no prescription in landes maketh a right.

Also that a prescription of rent and profits appender, out of land, maketh a right.

Also

disseint
entrie

escuage

knights service

disseint
take
away
entrie

prescription
in
land
maketh
a
right

rent
profits
appender
out
of
land
maketh
a
right

Also that the limitation of a prescription generally take, is fro the time that no mas mund runneth to the contrary.

Also that assignes may be made vpon landes geuen in fee for terme of life, or for terme of yeres though no mention bee made of assignes and the same law is of a rent that is graunted, but otherwise it is of a warranty and of a covenant.

Assignes may be made of lande in fee for terme of life or yeres

Also that a condition to auoide a freeholde cannot be pleaded without deede, but to auoide a gift of a chattell it may bee pleaded without deede.

Also that a release or a confirmation made by him that at the time of the release or confirmation made, had no right, is boide in the law, though a right come to him after, except it bee with warranty, and the it shal barre him of all right that hee shall haue after the warranty made.

not a pur or release or confirmation except an warranty

Also that a right or title of action that only dependeth in action, cannot be geue nor granted to none other but onely to the tenant of the ground, or to him that hath the reuerlion or remainder of the same lande.

freehold

Also that in an action of debt vpon a contract, the def. may swage his law, but otherwise it is vpon a lease of landes for terme of yeres or at will.

upon a lease of landes for terme of yeres or at will

Also that if an exigent in case of felony be awarded against a man: he hath thereby forthe with forfeited his goods to the king.

for forfeiture of goods

Also if the soune bee accainted in the lye of the

The viij. Chapter.

the father, and after hee purchaseth his chartor of pardon of the kinge, and after the father dieth: In this case y land shal eschete to the lord of the fee, in so much y though he haue a yonger brother, yet the land shal not discēd to him for by the attainer of the elder brother, the bloud is corrupt, and the father, in law dyed without heire.

Also if an Abbot or a Prior alien the landes of his house & dieth, in this case, though his successor haue right to the landes, yet hee may not enter: but he must take his action y is appointed him by lawe.

Also there is a maxime in the lawe, that if a villayne purchase landes and the lord entre, he shal enioy y land as his owne: but if y villaine alien before the lord entre, the alienation is good. And the same lawe is of goods.

Also if a man steale goods to the value of xij. s. or above, it is felony, & he shal die for it. And if it be vnder y value of xij. s. then it is but petite larceny, and he shal not dy for it, but shal be otherwise punished after y discretion of y Judges, except it bee taken from the person, for if a man take any thinge how litle soener it bee frō a mān person feloniously, it is called robbery & he shal die for it.

Also he y is arraigned vppon an inditement of felony shalbee admytted in fauour of life to challen g xxxvi. iurours peremptorily, but if he challenge any above that number, the lawe taketh him as one that hath refused the lawe, because he hath refused thre whole enquestes, & there=

*Bloud corrupt
land shal
eschete*

action appointed

*By villaine
alienation
good*

*difference
between
felony and
petit larceny*

challenge

therefore hee shal die, but so cause hee may chal-
 leng as many as he hath cause of challenge to.
 And further it is to be vnderstād, y^e such per-
 toze challenge shal not bee admitted in appeale
 because it is at the suit of the party.

Also the land of euery man is in the law en-
 closed fro other, though it lie in the open felde.
 And therefore if a man do a trespass therin, the
 writ shal be Quare clauum fregit.

Also the rentes, commons of pasture of tur-
 bary, reuerfions, remainders, noz such other
 thinges which lye not in mannel occupation,
 may not bee geuen noz graunted to none other
 without writting.

Also that he y^e recovereth debt or damages in
 the kinges courte by such an action wherein a
 Capias lay into y^e procelle, may win a yere after y^e
 recovery, haue a Capias ad satisfaciendum to take the
 body of the defendat, and to commit him to pri-
 son til he haue paide the debt and damages, but
 if there lay no Capias in the first action then the
 pleintife shal haue no Capias ad satisfaciendum, but
 must take a Fieri facias, or an Elegit within y^e yere
 or a Scire facias after the yere, or within the yere
 if hee will.

Also if a release or confyrmation bee made to
 him, y^e at the time of the release made, had no-
 thing in the land &c. The release or confyрма-
 tion is boide, except in certain cases, as to bou-
 chy and certaine other which neede not here to
 be remembred.

Also there is a maxime in the lawe of Eng-
 land, that the kynge may diseyse no man, ne
 C. ij. that

Supp. p. 100. v. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

Quare clauum fregit

*Writ not given
for out more
long not*

*Note for
Capias
22 H. 6. c. 12*

Writ

The viij. Chapter.

81

*I kinge may
disseise no
man no
we man
disseise
kinge*
that no man may disseise the kinge, ne pull any reuerſion or remainder out of him.

Also the kinges excellency is ſo high in the law, that no freehold may be geuen to the king ne bee deriued from him, but by matter of record.

Also there was ſometime a Maxime and a lawe in Englande, that no man ſhoulde haue a writ of right, but by ſpecial ſuit to the king, & for a fine to be made in the chancery for it. But theſe maximes be chaged by y^e ſtatute of Magna carta, the xviij. chapter, wher it is ſaid thus, *Nulli negabimus, nulli vendemus rectum vel iuſtitiam.* And by the wordes *nulli negabimus*, a man ſhall haue a writ of ryght of courſe in the Chancery without ſuing to the king for it. And by the wordes, *nulli vendemus*, he ſhall haue it without fine: and ſo many times y^e olde Maximes of the law bee chaged by ſtatutes.

Also, though it be reaſonable that for the manyfold diuerſities of actions y^e bee in the lawes of England, that there ſhould be diuerſities of proces, as in the real actions after one maner & in perſonall actions after an other maner: Yet it cannot be proued meereſly by reaſon, that the ſame proceſſe ought to be had & none other: for by ſtatut it might be altered. And ſo the ground of the ſaid proceſſe is to be referred only to the maximes and cuſtomes of the realmes.

And I haue ſhewed thee theſe maximes befoze rehearſed, not to the entent to ſhewe thee ſpecially what is the cauſe of the law in them, for y^e would aſke a great reſpite. But I haue ſhewed

shewed them onely to the entent y^e thou maist perceiue that y^e said Maximes and other like, may conueniency be set for one of the grounds of the lawe of England. Moreover there bee diuers cases, wherof I am in doubt whether they be onely Maximes of the law, or that they be grounde upon the law of reason, wherein I pray thee let me heare thine opinion.

D. I pray thee shewe those cases y^e thou meanest, and I shal make thee answer therein as I shal see cause.

Hereafter followe diuers cases, wherein the Student doubteth whether they be onely Maximes of the law, or that they be grounde upon the lawe of reason.

The ix. Chapter.

The lawe of England is, that if a man commaunde another to doe a trespass, & he doth it, that the commaunder is a trespasser. And I am in doubt whether that it be onely by a Maxime of the law, or y^e it be by the law of reason.

Also, I am in doubt vpon what lawe it is grounde, that the accessorie shal not be put to answer before the principal &c.

Also, the lawe is that if an Abbot buy a thing that cometh to the vse of the house, and dieth, that his successours shalbe charged: And I am somewhat in doubt vpon what ground that

C. in.

lawe

The ix. Chapter.

law dependeth.

right against all Also, that he y^e hath possession of land though it be by disseisin hath right against al men, but against him that hath right.

will not abate Also, that if an actiō real be sued against any mā that hath nothing in the thing demaunded, the writ shal abate at y^e cōmon law.

will not abate Also, that the alienatiō of the tenāt hanging the writ nor his entre into religion, oz if he be made a knight, oz if she be a woman & take an husbände hanging the writ, that the writ shal not abate.

will not abate Also, if land & rēt that is going out of y^e same land, come into one mans hande of like estate, & like luertie of title, the rent is extinct.

better title Also if land discend to him that hath right to y^e same lande before, hee shalbe remitted to hys bettter title if he wil.

will not abate Also if two titles be concurraunt together, y^e eldest title shalbe preferred.

will not abate Also that euery man is bound to make recōpence for such hurt as his beasts shal do in the corne oz grasse of his neighbour, though hee knowe not that they were there.

very difficult Also if the demaundant oz plaintife hanging hys writte, wil enter into the thinge demaunded, hys writt shal abate. And it is many times very hard & of great difficultie to knowe what cases of the lawe of England be grounded vpon the lawe of reason, and what vpon custome of the Realme, and though it be harde to discusse it, it is very necessary to be knowe, for the knowledg of the perfect reason of the lawe

lawe: & if any mā think that these cases before rehearsed be grounded vpon the law of reason, then he may referre them to the first ground of the law of England, which is the law of reason wherof is made mencion in the v. chap. And if any man thinke that they be grounded vpon the law of custōe, then he may referre them to the maximes of the law, which be assigned for the thirde ground of the lawe of Englad, wherof mencion is made in the viij. chap. as before appeareth.

D. But I pray thee shew me by what authority is it proued in the lawes of England y^e cases that thou hast put before in the viij. cha. & such other which y^e callest maximes ought not to be denied, but ought to be take as maximes, for si the they cannot be proued by reason as thou agreest thy selfe they cannot, they may as lightly be denied as affirmed, vnlesse there be some suffeycent authority to approue them.

S. Many of the customes and maximes of the lawes of England be knowen by the vble the custōe of the realme so apparantly that it needeth not to haue any lawe written thereof, for what needeth it to haue any lawe written that the eldest sōne shal enherite his father, or that al the daughters shal enherite together as one heire, if there be no sonne, or that the husband shal haue the goods & chattels of his wife that she hath at the time of y^e espousels, or after, or y^e a bastard shal not inherite as heire, or y^e executor shal haue the disposition of al y^e goods of their

The x. Chapter.

their testatour: & if there be no executors that the Ordinary shal haue it, & the heire shal not meddle with the goodes of his auncestre, but if any particuler customes help him.

The other Maximes & customes of the law that be not so openly knowen among the people may be knowen partly by the law of reason & partly by the bookes of the lawes of Englad called peres of termes, and partly by diuers records remayning in the kinges courts & in his treasury. And specially by a booke that is called y^e Register, & also by diuers Statuts. wherin many of the said customes & Maximes bee oft recyted, as to a diligent searcher shall evidently appeare.

¶ Of the fift ground of the lawe of Englande.

The x. Chapter.

The fiftth ground of the lawe of Englande standeth in diuers perticuler customes vlsed in diuers countiees townees, Cities, and Lordshippes in thys Realme, the which perticuler customes, because they be not against the law of reason nor the law of God, though they be against the sayd general customes or Maximes of the law, yet neuerthelesse they stāde in effect & be taken for law, but if it ryse in question in the kinges courts, whether there be any such particuler custome or not, it shalbe tryed by xj. men, and not by the Judges, except the

good booke
for m^r
m^rds to
y^ear^e of
Laines
and y^e
Register

particular
Customs

the same particuler custome be of recoꝝd in the same court. Of which perticuler customes. I haue hereafter noted some for an example.

First there is a custoe in Kent that is called Gavelkind, that al the biethꝛe shal inherit together, as sisters at the common law.

Also there is another perticuler custome, that is called burghenglish, where the yonger sonne shal inherit befoꝛe the eldest, & that custome is in Nottingham.

Also there is a custome in the Citie of London that free men there, may by their testament enrouled bequeath their lands that they befeiled of to whom they wil, except to mortmain. And if they be Citizens & freemē, that they may also bequeth their lands to mortmaine.

Also in Gavelkind though the father be hanged, the sonne shal inherit. For their custoe is, the father to the boughē, the sonne to the plough.

Also in some countreyes the wyfe shall haue the halfe of the husbands lands in the name of her dowry as long as she liueth sole.

And in some countrey the husband shal haue the halfe of the inheritance of his wife, though he haue no issue by her.

Also in some countrey an infant when he is of age of xij. yere may make a feoffement, & the feoffement good. And in some countrey when he can meat an elle of cloth.

¶ Of the first ground of the lawe of Englande.

The

gavelkind

burghenglish

freemen of London

go fuller
yunged yd sonne
shal inherit

dowry full
by custome

by custome
not

feoffement
by and unfors
good by cust
and

The xj. Chapter.

¶ The xj. Chapter.

22
The sixth ground of the lawe of Englande standeth in diuers statutes made by our so- ueraigne Lord the king and his progenitours, & by the lords spiritual & temporal, & the com- mōs in diuers parliamēts, in such cases where the lawe of reason, the law of God, customes, maximes, ne other grounds of the lawe seemed not to be sufficient to punishe euil men, & to re- ward good men. And I remēber not y I haue seene any other grounds of the law of Englad but onely these that I haue before remembred. Furthermore it appeareth of that I haue said before, that oft times two or thre groundes of y law of England must be ioined together, or y the plaintife can open & declare his right, as it may appeare by this example. If a man enter into an other mans lande by force, & after ma- keth feoffement for maintenāce to defraud the plaintife from his actiō: In this case it appea- reth y the said vnlawful etre is prohibited by the law of reason, but the plaintife shall reco- uer treble damages, that is by reaso of the sta- tute made in the 8. yere of king Henry y vi. ix. chap. And that the damages shalbe selled by xij. men y is by the custome of the realme. And so in this case thre groundes of the lawe of Englande maintaine the plaintifes action. And so it is in dyuers other cases that neede not to be remembred now, & thus I make an end for this time, to speake any farther of the groundes of the law of England, D. I thanke the

thee for the great paine y^e thou hast taken therein. neuertheles for asmuch as it appeareth that thou hast said before, that the learned men of y^e lawe of England pretend to verifie that y^e lawe of England wil nothing doe, ne attēpt against the lawe of reason, nor the lawe of God, I pray thee aunswere me to some questions groundēd vpon the lawe of England howe as thou thinkest the lawe may stande with reason or conscience in them.

S. But the case & I shal make aunswere therein as wel as I can.

The first questiō of y^e Doctour, of the lawe of Englande and conscience.

The xij. Chap.

I haue heard say, that if a mā y^e is bounde in an Obligation pay the money, but he taketh no acquitaunce, or if he take one & it happeneth him to leese it, y^e in that case he shalbe copelled by the lawes of England to pay the money againe, & howe may it be said then, that that lawe standeth with reason or conscience, for as it is groundēd vpon the lawe of reason, that debtes ought of right to be paid, so it is groundēd vpon the lawe of reason (as me seemeth) that whē they be paid that he that payed them shoulde be discharged. S. First thou must vnderstande that it is not the lawe of Englande, that if a manne that is bound in an Obligation paye the money wythout acquitaunce

or

*admiranda non
argui possunt*

The xij. Chapter.

oz if he take acquittance and leese it, that there-
fore the lawe determineth y he ought of right
to pay the money eftsones, for that lawe were
both against reason and conscience, but though
it is that there is a general Maxime in y lawe
of England, that in an action of debt sued vpon
an obligation, the defendant shal not plede that
he oweth not the money, ne can in no wise dis-
charge himselfe in that action, but he haue ac-
quittance oz some other writing sufficient in y
lawe, oz some other thing like, witnessing that
he hath paid the money, and that is ordeyned
by the lawe to auoyde a great inconuenience
that els might happen to come to manye peo-
ple: that is to say, that every man by a nude
parol and by a bare auerment shoulde auoyde
an obligation. wherefore to auoyd that inco-
uenience the lawe hath ordeined that as the de-
fendant is charged by a sufficient writing, that
so he must be discharged by sufficient writing,
oz by some other thinge of as high authority
as the obligation is. And though it may fol-
lowe thereupon, that in some particuler case a
man by occasion of that general Maxime may
be compelled to pay the money againe that he
payed before: Yet neuerthelesse, no default can
be therefore assigned in y lawe. For like as ma-
kers of lawe take heede to such things as may
oft fall, and doe most hurt amonge the people,
rather the to perticuler cases. So in likewise
the general grounds of the lawe of England
hede more what is good for many, the what is
good for one Anguler person only. And because
it should

*against reason
and conscience*

from Lawe

note

it shoulde bee a hurt to many, if an obligation should be so lightly avoided by sword, therefore the lawe specially pzeuenteth that hurt vnder such maner as betoze appereth. And yet intendeth not noz commaundeth not, that the money of right ought to be payde againe, but setteth a general rule which is good and necessary to all the people, and that euery man may well keepe without it be thzough his own default. And if such default happen in any person, wherby hee is without remedy at the common law, yet hee may be holpen by a Sub pena, and so he may in many other cases where conscience serueth for him that were to long to rehearse nowe.

D. But I pray thee shew me vnder what maner a manne may be holpen by conscience. And whether he shalbe holpen in the same courte oz in an other. S. Because it cannot bee well declared where a man shalbe holpen by conscience & where not, but it hee first knowen what conscience is, therefore because it pertaineth to thee most properly, to treat of the nature and qualitie of conscience, therefore I pray thee that thou wilt make me some bziue declaration of the nature and quality of conscience, & then I shal aunswere to thy question aswell as I can.

D. I wil with good will doe as thou layest, and to the entet that thou maist the better vnderstande that I shal say of conscience, I shall first shewe thee what *Sunderis* is, and then what reason is, & then what conscience is, and how these three differ among the selfe, I shall somewhat touche.

What

*holpen by a
Sub pena*

The xiiij. Chapter.

¶ What Sinderesis is,

The xiiij. Chapt.

Sinderesis is a naturall power of the soule set in the highest part thereof, moving and stirring it to good and abhorring euil. And therefore Sinderesis neuer sinneth nor erreth. And this Sinderesis our Lord put in man to the intent þ the order of thinges should be obserued. For after saint Dionise, the wisdom of God ioyneth þ beginning of the second thing to the last of the first thinges, for An angel is of a nature to vnderstand without serching of reason, & to that nature man is ioyned by Sinderesis, the which Sinderesis may not wholly bee extincted neither in man, ne yet in dāpned soules. But neuertheles as to þ vse & exercise thereof, it may bee let for a tyme, eyther through the darknes of ignoraunce, or for vndiscrete delectation, or for the hardnes of obstinacy. First by the darkenelle of ignoraunce Sinderesis may be let that it shal not murmur agaynst euil, because he beleueth euil to be good, as it is in heretikes, the which when they die for the wickednes of their Errour, beleue þ they dye for the very trowth of the faith. And by vndiscrete delectation, Sinderesis is sometime so ouer layde, that remorse or grudge of conscience for that tyme can haue no place. For þ hardnes of obstinacy Sinderesis is also let that it may not stirre to goodnesse, as it is in dampned soules

soules that be so obstinat in euil that they may neuer bee enclined to good. And though Sinderesis may be sayd to that point extinct in dampned soules, yet it may not bee sayd y^t it is fully extinct to al intents. For they alway murmur against y^e euil of the paine y^e they suffer for sinne. And so it may not be sayd y^t it is vniuersally, & to al intents, and to al times extinct: and this Sinderesis is the beginninge of al thinges that may bee learned by speculation or studie, and ministreth the general groundes and principles thereof. And also of all thinges that are to be done by man, an example of such thinges as may be learned by speculation apereth thus: Sinderesis saith that every whole thing is more then any one part of the same thinge, and that is a sure grounde that neuer faileth. And an example of thinges that are to bee done, or not to be done: as where Sinderesis saith no euil is to be done, but that goodnes is to be done and followed, and euil to be fled, and such other.

And therefore Sinderesis is talled by some men, the lasse of reason, for it ministreth the principles of the lasse of reason, the which bee in every man by nature, in that hee is a reasonable creature.

¶ Of reason.

The xiiij. Chapter.

Where

The xiiij. Chapter.

When the first manne Adam was created
 he receyued of God a double eye, that is
 to say, an outwarde eye, whereby he might se
 bysible thinges, and knowe his bodely ene-
 mies and eschewe them. And an inwarde eye,
 that is the eye of reason, whereby he might
 see his spiritual enemyes that fighte agaynst
 his soule and beware of them. And amonge al
 giftes that god gaue to man, this gift of reason
 is the most noblest, for therby mā precelleth
 beastes, and is made like to the dignyty of An-
 gelles, discerning trowth from falsed, and euil
 from good. Wherefore he goeth farre from the
 effect that he was made to when he taketh no
 heede to the trowth, or when he preferreth euil
 before god. And therfore after Doctors rea-
 son is the power of y^e soule, that discerneth be-
 tweene good and euil, and betweene good and
 better, comparynge the other: the which al-
 sheweth vertues, loueth good, and flieth vices.
 And reason is called righteous and good, for
 it is conforable to the will of God, and that is
 the first thing, and the first rule that al thinges
 must be ruled by, & reason that is not righteous
 nor straight, but that is said culpable, is either
 because shee is deceyued with an erroure that
 might be overcome, or els through her prid
 or slouthfulnes she equireth not for knowledg
 of the trowth that ought to bee enquired. All
 reason is deuided in two partes, that is to say,
 into the higher part & into the lower part.
 The higher part hideth heauenly thinges and
 eternall, and reasoneth by heauenly lawes or
 by

A double eye
 was given
 to Adam.

The noblest gift

Reason deuided
 into 2 parts

by heauenly reason what is to be done, & what is not to be done, and what things God commaundeth, and what he prohibiteth. And this higher part of reason hath no regard to transitory things or tēporal things: but p̄ sometime as it were by maner of counsell, she bridgeth forth heauenly reasons to order wel tēporal things. The lower part of reason woraeth most to gouerne wel tēporal things, and she groundeth her reasons much vpon lawes of man, & vpon reason of man, wherby she cōcludeth p̄ this to be done that is honest and expedient to the cōmon wealth, or not to be done, for it is not expedient to the common wealth. And so p̄ reason wherby I know god and such things as pertaine to god, belongeth to p̄ highest part of reason. And that reason wherby I know creatures belongeth to the lower part of reason. And though these two parts, that is to say, the higher part & the lower part be one in deed & essence, yet they differ by reason of their working & of their office as it is of one self eye, that sometime looketh upward, and sometime downward.

¶ Of conscience. The xv. Chapter.

This word conscience, which in Latin is called Conscientia is cōpounded of this preposition: cum, that is to say in English, with, and with this nowne scientia, p̄ is to say in English, knowledge, and so conscience is as much to say as knowledge of one thig in an other thig, & conscience so taken is nothing els, but an applying

The xv. Chapter.

applying of any science or knowledg to some par-
 ticuler act of mā. And so cōsciēce may sometime
 erre & sōtime not erre. And of cōsciēce thus ta-
 ken, doctoz make many descriptions, whereof
 one doctoꝝ saith, that conscience is the lawe of
 our vnderstanding. Another, y conscience is an
 habite of y minde discerning betwixt good and
 euil. Another, that cōsciēce is y iudgement of
 reason, iudging on the particuler actes of man,
 al which sayings agree in one effect (that is to
 say) that cōsciēce is an actual applying of any
 cūning or knowledg to such things as be dōe,
 whereupon it followeth y vpon the most perfit
 knowledg of any law or cūning, & of the most
 perfit & most true applying of the same to any
 particuler act of man, followeth the most perfit
 the most pure, & the most best cōsciēce. And if
 there be default in knowing of y truth of such a
 lawe, or in y applying of the same to particuler
 acts, then therupo foloweth an error or default
 in cōsciēce, as it may appeare by this example.
 Sinderesis ministrereth a vniuersal principle y ne-
 uer erreth (that is to say) y an vnlawful thinge
 is not to be done. And the it might be taken by
 some man y euery oth is vnlawful because the
 Lord saith. Mat. v. Ye shal in no wise sweare.
 And yet he y by reason of the saide words will
 hold that it is not lawfull in no case to sweare
 erreth in cōsciēce, for he hath not y pfit know-
 ledg & vnderstandinge of the truth of the sayd
 gospel, nor he reduceth not the saying of scrip-
 ture, to other scripturs, in which it is grated y
 in some case an oth may be lawfull, & the cause
 why

*conscience
 is law of
 vnderstand-
 inge*

Note

Why cōscience may so erre in þe said case, & in o-
ther like, is becaule cōscience is formed of a cer-
taine p̄positiō, or questiō grounded p̄ticularly
vpon vniuersal rules ordeined for such thinges
as are to be done. And becaule a particuler p̄-
positiō is not knowe of himself, but must apere
& be seached by a diligēt search of a reaso, ther-
fore in search & in the cōscience þe should be for-
med therupō may happe to be error, & thereupon
it is said þe ther is error in cōscience, which error
cometh either becaule he doth not assent to þe
ought to assent vnto, or els becaule his reasons
whereby he doth refer one thing to an other, is
deceiued. For further declaratiō wherof it is to
vnderstand þe error in cōscience cometh viij. man-
ner of waies. First is through ignorāce: & that
is whē a mā knoweth not what he ought to do
& thē he ought to aske counsell of thē þe he think-
eth most expert in that science, whereupon his
doubt riseth. And if he can haue no counsell then
he must wholly comit him to God: & he of his
goodnes wil so order him, þe he wil saue him fro
offence. The second is through negligence, as
when a man is negligēt to search his owne cō-
science, or to enquire the truth of other. The
third is through pride, as when he wil not me-
ken himselfe, ne beleue them þe be better & wi-
ser then he is. The fourth is through singula-
rity as whē a man folloiweth his owne wit, &
wil not confirme himself to other, nor folloiw
the good common waies of good men. The fift
is through an inordinate affection to himselfe
wherby he maketh cōscience to folloiw his desire

D. ij.

and

Error in con-
science. y. manner
of waies

The xv. Chapter.

& so hee causeth her go out of her right course.
The first is through puslanimity whereby soe
person dyedeth oft times such things as of rea-
son he ought not to dyed. The second is through
perplexity, & that is when a man beleueth him-
self to be so set betwixt two sinnes he thiketh
it vnpossible, but y he shal fal into the one, but a
man can neuer be so perplexed in deed, but thro-
ugh an error in conscience: and if hee wil put
away y error he shalbe deliuered, therefore I
pray thee that thou wilt alwaies haue a good
conscience, & if thou haue so, thou shalt alwaies
be mery, and if thine own hart reprove thee not
thou shalt alwaies haue inwarde peace. The
gladnes of rightwise men is of god and in god,
and their ioy is alwaies in truth and goodnes.
There be many diuersities of conscience, but
there is none better the y, whereby a mā truely
knoweth himself. Many mē know many great
& high cunning thinges, & yet know not them-
selues, and truely he that knoweth not himself
knoweth nothing wel. Also he hath a good and
cleane conscience, that hath purity & cleanes in
his hart, truth in his worde, & rightwisenes in
his dede. And as a light is set in a lantern y al-
y is in y house may be seene thereby, so almight-
y god hath set cōscience in y mids of every rea-
sonable soule as a light wherby he may discern
& know what he ought to do, & what hee ought
not to doe. Therefore for asmuch as it behoueth
thee to be occupied in such things as ptain to y
law: It is necessary y thou euer holde a pure &
a clean cōscience, specially in such thigs as cō-
cerne

cerne restitution: for the sinne is not forgiven
but if þ thing þ is wrongfully taken be restored
And I counsel thee also þ thou love þ is good &
lie that is euil, & that thou doe to another as
thou wouldest should be done to thee, & þ thou
do nothing to other þ thou wouldest not should
be doe to thee. That thou doe nothing against
trouth, that thou live peaceably w thy neigh-
bour, & that thou doe Justice to euery man as
much as in thee is. And also that in euery ge-
neral rule of the lawe, thou do obserue & kepe
equitie: & if thou do thus, I trust þ light of the
lanterne, that is thy conscience shall neuer be ex-
tinguished. **S.** But I pray thee shew me what is
that equity that thou hast spoken of before, & þ
thou wouldest that I should kepe. **D.** I will
with good wil shew thee somewhat thereof.

What is equity. The xvj. chap.

Equitie is a right wisenes that considereth al
the particuler circumstances of the dede, the
which also is reposed in the sweetnes of mer-
cy. And such an equity must alway be obserued
in euery lawe of man, and in euery generall rule
therof, and that knewe he wel, that said thus.
Lawes couet to be ruled by equity. And þ wise
man saith, Be not ouer much rightwise: for þ
extreme rightwisenes is extreme wronge, as
who saith, if thou take al þ þ words of þ lawe,
geueth thee, thou shalt soetime do against þ lawe
And for the plainer declaratiō what equity is
thou shalt vnderstand that sith þ deedes & notes
of

D. iij.

The xyj. Chapter.

of men, for which laws ben ordeined, happen in
divers maners infinitely. It is not possible to
make any general rule of þ law, but that it shal
faile in some case, & therefore makers of laws
take heede to such things as may often come &
not to every perticuler case, for they could not
though they would. And therefore to folloiw þ
wordes of þ law were in some case both against
iustice & the common wealthe wherfore in s^oe
cases it is necessary to leaue the wordes of the
law, and to folloiw that reasoⁿ & Justice requi-
reth, and to that intent equity is ordeined: that
is to say, to temper & mitigate the rigour of þ
law. And it is called also by some m^o Epitais,
the which is no other thing but an exceptioⁿ of
the law of god, or of the law of reasoⁿ from the
general rules of the law of man, when they by
reason of their generalty would in any party-
culer case iudge against þ law of god, or the law
of reason, þ which exception is secretly vnder-
stand in every general rule of every positive law.
And so it appeareth that equity taketh not a-
way þ very right but only that, þ seemeth to be
right by the general wordes of þ law, nor it is
not ordeined against the cruelnes of the law, for
the law in such case generally taken, is good in
himself but equity folloiweth þ law in al p^oticu-
ler cases where right & iustice requireth, not
standing that general rule of þ law be to þ coⁿ-
trary: wherfore it appereth þ if any law were
made by a maⁿ wout any such exceptioⁿ exp^os-
selyed it were manifestly unreasonable, & were
not to be suffered: for such cases might coⁿ þ he
that

that would obserue y^e law should breake both
 the law of God & the lawe of reason. As if a
 mā make a bove y^e he wil neuer eat whit meat
 & after it happeneth him to come there where
 he can get no other meat. In this case it beho-
 ueth him to breake his auow, for that vticuler
 case is excepted secretly from his generall a-
 uow by this equity or Epicay, as it is laid be-
 fore. Also if a law were made in a city y^e no mā
 vnder y^e paine of death should opene the gates of
 the city before the sunne rising, yet if y^e citize
 before that houre flying fro^m their enemies coe
 to the gates of the City, & one for sauing of y^e
 Citizens openeth the gates before the houre
 appointed by the law, yet he offendeth not the
 law for that case is excepted fro^m y^e said general
 law by equity as is laid before: & so it appereth
 y^e equity rather followeth y^e intent of the law,
 then the words of the lawe. And I suppose
 there be in likewise some like equities grounded
 vpon the general rules of the law of the realme.
 S. Ye verely, wherof one is this, there is a ge-
 neral prohibition in the laws of Englad: that
 it shal not be lawfull to any mā to enter into y^e
 freeholde of an other without authority of y^e
 owner or of y^e law; but yet it is excepted fro^m y^e
 said prohibition by y^e law of reason, that if a mā
 driue beasts by the high way & the beasts hap-
 pen to escape into the corne of his neighbour, &
 he to bring out his beasts y^e they shoul^d do no
 hurt goeth into y^e ground & fettereth out y^e beasts
 there he shal iustifie that enter into the ground
 by the law. Also notwithstanding the statute

D. iij.

of

Note

Equity valges
 the lawe
 in some cases
 y^e lawe
 y^e lawe

The xvj. Chapter.

Statute
 of Edward the third made the xiiij. yere of his
 reigne wherby it is ordeined that no mā upon
 paine of imprisonment should geue any almes to
 any baliant begger, that is wel able to labour:
 Yet if a mā meete with such a baliant begger in
 to colde a soether and so light apparell, that yf
 he haue no clothes he shal not be able to cōe to
 any towne to haue succor, but is likely rather
 to die by the way, & he therfore geueth him ap-
 parel to saue his life he shalbe excused of y^e said
 statut by such an exception of the law of reasoⁿ
 as I haue spoken of. I know wel that as
 thou saist he shalbe excepted of the said statute
 by conscience, & ouer y^e, that he shal haue great
 reward of god for his good dede, but I would
 wit whether the party shalbe so discharged in
 the cōmon law by such an exception of the law
 of reason or not, for though ignorance vnuinci-
 ble of a statute excuse y^e party against god (yet
 as I haue heard) it excuseth not in the lawes
 of y^e realme, ne yet in chancery as some say, al-
 though y^e case be so y^e the party to whō y^e for-
 feiture is geuen may not with conscience leaue it
 S. Merely, by thy questiō thou hast put me in
 a great doubt, wherefore I pray thee geue me a
 respite therein to make thee an answer, but as
 I suppose for y^e time (howbeit I wil not fully
 affirme it to be as I say) but it should seme y^e
 he should wel pled it for his discharge at y^e cō-
 mo law, becaule it shalbe take y^e it was y^e entet
 of the makers of y^e statute to except such cases.
 And y^e iudges may many times iudge after the
 mind of the makers as farre as the letter may
 suffer

suffer & so it semeth they may in this case. And diuers other exceptions there be also fro other general groudes of the law of the Realme by such equitie, as thou hast remembred before, that were too long to rehearse now. D. But yet I pray thee shew me shortly somewhat more of thy mind vnder what manner a mā may be holpen in this realme by such equity. S. I. wil with good wil shew thee somewhat therein.

In what maner a man shalbe holpen by equitie in the lawes of England.

The xvij. Chapter.

First it is to be vnderstand there be in many cases diuers exceptions fro y general groudes of y law of y realm by other reasonable groudz of the same lawe, whereby a man shalbe holpe in y comō law, as it is of this generall groud, that it is not lawfoul for any mā to enter vpon a discent, yet the reasonableness of the law excepteth from that ground, an infant that hath right, & hath suffered, such a discent & him also p. maketh continual claime, & suffereth the to enter, notwithstanding the discent. And of that exception they shal haue auantage in the comon law, and so it is likewise of diuers statutes, as of the statute wherby it is prohibited, that certain particuler tenants shal do no wast, yet if a lease for terme of yerres be made to an infāt p. is within yerres of discretiō, as of the age of v. or vij. yerres, & a strainger do wast, in this case this infant

*Leas purp. formed
Doubt from
infants*

The xviiij. Chapiter.

infant shal not be pnnished for the wast, for he
 is excepted & excused by the law of reason. And
 a woman covert to whom such a lease is made
 after her husbands death by a reasonable max-
 ime & custome of the realme. And also for repe-
 rations to be made vpon the same ground, it is law
 full for such perticuler tenants to cut downe
 trees vpon the same ground to make reparaty-
 ons. But the cause there as I suppose is for the
 mind of the makers of the said estatut, shal
 be taken to be, that that case shoulde be excep-
 ted. And in al these cases the parties shalbe hol-
 pen in the same court & by the common law, & thus
 it appeareth that sometime a man may be ex-
 cepted from the rigor of a maxime of the law by a
 nother maxime of the law. And sometime from the
 rigor of a statute by the law of reason, & some-
 time by the intent of the makers of the statute,
 but yet it is to be vnderstande the most commonly,
 where any thing is accepted from the general cus-
 tomes or maximes of the lawes of the realme.
 By the law of reason the party must haue his re-
 medy by a writ which is called Sub pena. If a Sub pe-
 na lyeth in the case, but where a Sub pena lyeth, &
 where not, it is not our intent to treat of at
 this tyme. And in some case there is no reme-
 dy for such an equity by way of compulsion,
 but al remedye therein must be committed to
 the conscience of the partie. D. But in case
 where a Sub pena lieth to whom shal it be dy-
 rected, whether to the iudge or to the party.
 S. It shal neuer be directed to the iudge, but
 to

*how many
 years after
 the death of the
 husband
 Henry 8.*

The xviii. Chapter. 30

to the party plaintife or to his attourney and
therupon an Iniunction comāding the by y
same vnder a certaine paine therein to be con- *Note*
tayned that he procede no further at the com-
mon lawe til it be determined in y kings Chaū
cery whether the plaintife hath title in consci-
ence to recover or not. And when the plaintife
by reason of such an Iniunction ceaseth to aske
any farther processe, the Judges will in lyke
wise cease to make any further proces in that
behalf.

Q. Is there any mencion made in the lawe of
Englād of any such equities? A. Of this fine
equitie to the intēt that is spoke of here, there
is no mencion made in the lawe of Englande,
but of an equity deriued vpon certeine statutes
mencion is made many times and often in the
law of Englande. But that equity is al of an
other effect thē this is, but of the effect of this
equity that we now speake of, mencio is made
many times, for it is oft times argued in y law
of England, where a Sub pena lyeth and where
not: & daily billes be made by men learned in y
law of y realme, to haue Sub penas. And it is
not prohibited by the law, but y they may wel
doe it so y they make thē not, but in case where
they ought to be made, and not for vexation of
the party, but accordig to y trouth of y matt.
And the law wil in many cases y there shalbe
such remedy in the chaūcery vpon diuers thigs
grounded vpon such equities, and thē the lord
Chauncelloz must order his conscience after y
rules and groundes of the law of the Realne,
in

The xviiiij. Chapter.

*not as especial
ground but by
commission*

in so much that it had not bene incōuenient to
haue assigned such remedy in the chancery vpon
such equities for the senen grounds of the law
of England, but for asmuch as no recorde re-
maineth in the kings court of no such bil ne of
p writ of Sub pena or intimation that is sued
thereupon, therefore it is not set as for a special
ground of p law, but as a thing p is suffered by
the law. D. The liij. p parties sought of right
in many cases to be holpe in the chancery vpon
such equities: It semeth p if it were ordeyned
by statute, that there should be no remedy vpon
such equities in p chauncery nor in none other
place, but p every matter should be ordered on-
ly by the rules & grounds of the cōmō law, that
p statute were against right & cōscience. S. I
think the same, but I suppose there is no such
statute. D. There is a statute of p effect, as I
haue heard say, wherein I would gladly heare
thy opinion. S. Shewe me that statute and
I shall wth good will say as me thinketh
therin.

Whether the statute hereafter rehearsed
by the Doctour be against cōscience
or not.

The xviij. Chapter.

There is a statute made in p liij. yere of king
Henry the fourth, the xxij. Chapter, whereby
it is enacted that iudgemēt geuen in the kings
courts, shal not be examined in the chancery,
Parlia

Parliament, nor els where, by which statut it appereth that if any iudgement be geuen in the kings courtes against an equity or against any matter of conscience, that there can be had no remedy by that equity, for the iudgement cannot be reformed without examination, and the examination is by the said statut prohibited, wherefore it seemeth that y^e said statut is against conscience, what is thine opinion therein. S.

If iudgements geuen in the kinges courtes should be examined in the chauncery before the kings counsel, or in any other place, the plaintiffs or demaundts shoulde seldome come to the effect of their suit, ne y^e lawe should neuer haue ende. And therfore to eschew that inconuenience y^e statute was made. And though peraduenture by reason of y^e statute, some singular pson may happē to haue lost: Neuerthelesse y^e said statute is very necessary to eschue many great vexations & vniust expēces y^e would els come to many plaintiffs y^e haue rightwisely recovered in y^e kings courts. And it is much more prouided for, in the law of England y^e hurt nor damages should not come to many, the only to one. And also the said statute doth not prohibite equity, but it prohibiteth only the examination of the iudgement for the eschewing of the inconuenience before rehearsed. And it seemeth that the said statut standeth with good conscience. And in many other cases where a man doth wrong yet he shal not be compelled by way of compulsion to reforme it, for many times it must be left to the conscience of y^e party, whether he wil redresse

The xviii. Chapter.

redresse it or not. And in such case he is in conscience as wel bound to redresse it if hee wil save his soule, as he were if he were compellab^t thereto by ^h law, as it may appere in diuers cases ^h may be put vpon the same ground. D. I pray thee put some of these cases for an example.

Note
graunge Jury
ignoring a
false verdict
in court
placitum
profo nil
S. If the defendaut swage his law in an action of debt brought vpon a true debt, the plaintife hath no meanes to come to his debt by way of compulsion, neither by Sub pena nor otherwise, & yet the defendaut is bound in conscience to pay him. Also if the graund Jury in attaint affirm a false verdict geuen by the pety Jury, there is no further remedy but the conscience of the party. Also where there can bee had no sufficient prooffe, there can be no remedy in the chauncery, no more then there may bee in the spiritual court. And because thou hast geuen an occasion to speake of conscience I would galdly here thy opinion where conscience shalbe ruled after the law, & where the law shalbe ruled after conscience. D. And of that matter I would likewise gladelly here thy opiniō, specially in cases grounded vpoⁿ ^h laws of England, for I haue not heard but litle therof in time past, but before ^h put any cases thereof: I would that thou wouldest shew me how these two questions after thy opinion are to be vnderstand.

¶ Of what law this question is to be vnderstand: that is to say, where conscience shalbe ruled after the lawe.

¶ The fix. Chap.

The

The lawe whereof mention is made in this question, that is to say: whether conscience shall be ruled by the lawe, is not as me semeth to be vnderstand only of the lawe of reason, and of þe lawe of God, but also of the lawe of man, that is not contrary to the lawe of reason, nor þe lawe of God, but that it is superadded vnto them for þe better ordering of the comon wealth, for such a lawe of mā is alwaies to be set as a rule in conscience, so that it is not laweful for a man to go fro it on the one side, ne on the other, for such a lawe of man hath not onely the strength of mā's lawe, but also of the lawe of reason, or of the lawe of god whereof it is deriued, for lawes made by mā which haue receiued of god power to make lawes, be made by God. And therefore conscience must be ordred by that lawe, as it must be vpon the lawe of god & vpon the lawe of reason. And furthermore þe lawe whereof mention is made in the latter end of þe chapter next before, that is to say, in that question wherein it is asked where the lawe is to be left and forsaken for conscience, is not to be vnderstande of the lawe of reason, nor of þe lawe of God: for the two lawes may not be lefte, nor it is not to be vnderstand of the lawe of mā that is made in particuler cases, and that is consonant to the lawe of reason, and to the lawe of god, and that yet that lawe should be left for conscience, for of such a lawe made by mā, conscience must be ruled, as it is said before, nor it is not to be vnderstand of a lawe made by mā comāding or prohibiting any thing to be doe that is against þe lawe of reason, or þe lawe of god

For

The xix. Chapter.

For if any law made by man, binde any person to any thing þ is against þ said lawes, it is no lawe, but a corruption and a manifest errour. Therefore after them þ be learned in the lawes of Englād, þ said question: that is to say where the law is to be left for cōscience, & where not, is to be vnderstand in diuers maners, and after diuers rules as hereafter shall somewhat be touched.

First many vnlearned persons beleue that it is lawfull for them to doe with good consciēce al things which if they do them, they shall not be punished therefore by þ lawe, though þ lawe doth not warrant them to do that they doe, but onely when it is done doth not for some reasonable cōsideration punish him that doth it, but leaueth it only to his cōscience. And therefore many persons do oft times that they should not doe, & keepe as their owne þ, that in consciēce they ought to restore. Wherefore there is in the lawes of England this case.

If two mē haue a woode iointly, and þ one of them selleth the woode & keepeth all þ money wholly to himself: In this case his felloso shall haue no remedy against him by the lawe, for as they when they tooke þ woode ioyntly, put ech other in trust, and were cōtented to occupy together, so þ law suffreth them to order the profits thereof according to þ trust that ech of them put other in. And yet if one take al þ profits, he is bound in cōscience to restore the haile to his felloso, for as the law giueth him right only to half þ land, so it geueth him right only in cōscience.

*in for wale
against person
in mikes alleging
he is lawfull
not good conscience*

*Note in for
2 persons for
a wood
they are
one sale
all profits*

science to þ halfe profits. And yet neuertheles it cannot be said in þ case, that þ law is against conscience, for the law neither willetþ ne commaundeth that one should take al þ profits, but leaueth it to their conscience, so that no default can be found in the lawe, but in him that taketh al þ profits to himselfe may be assigned default, which is bounde in conscience to reforme it, if hee wil saue his soule, though he cannot be compelled thereto by the lawe. And therefore in this case and other like þ opinion which some haue, that they may do with conscience, al that they shall not be punished for by the lawe if they doe it, it is to be left for conscience, but the law is not to be left for conscience.

¶ Addition.

¶ Also many men thinke þ if a man haue land that another hath title to, if he þ hath the right shall not by the action that is geuen him by the lawe to recouer his right by, recouer damages, that thē he that hath the land is also discharged of damages in conscience, & that is a great error in conscience, for though he cannot be compelled to yelde the damages by no mans law, yet hee is compelled thereto by the law of reason, & by the law of God; whereby we be bound to do as wee would be done to, and þ we should not couet our neighbors good, and therefore if tenant in taile be disseised & the disseisor dieth seised, & thē þ heire in þ taile bringeth a formedō & recouereth þ lād & no damages, for þ law geueth him no damage in that case, yet the tenāt by conscience is bounde to yeld damages to the heire in taile fro þ death

¶ i.

of

*error in non
Ronne*

*sonant in
tails recover
nol damage*

The xix. Chapter.

of his aūcester. Also it is taken by some men, y^e the law must be left for cōscience where y^e lawe doth not suffer a mā to deny that he hath before affirmed in court of recor^de, or for that hee hath wilfully excluded himself therof for some other cause, as if the daughter y^e is onely heire to her father, will sue livery with her sister that is a bastard, in y^e case she shall not bee after received to say that her sister is a bastard, in so much y^e if her sister take halfe the lad with her, there is no remedy against her by y^e law. And no more there is of diuersity in other estoppels, which were to lōg to reherse now. And yet the party that may take auantage of such an estoppel by the law, is bound in cōscience to forsake that aduantage, specially if he were so estopped by ignorance, & not by his own knowledge & assent, for though the law in such cases geueth no remedy to him that is estopped, yet the law iudgeth not that the other hath right vnto the thinge that is in variance betwixt them.

Also it is to vnderstand that the law is to be left for conscience, where a thinge is tryed and found by verdict against the truth, for in y^e common law the iudgemēt must be geuen according as it is pleaded and tried, like as it is in other laws, that y^e iudgemēt must be geuen according to that, that is pleaded and proued.

And it is to be vnderstād y^e the law is to be left for cōscience, where y^e cause of the lawe doth cease for whē the cause of the lawe doth cease, y^e lawe also doth cease in cōscience, as appereth by this case hereafter folloving.

¶ Addition.

Nota

*Lawe to be left
for conscience*

A man maketh a lease for terme of life & after
a straunger doth wast, wherefore y lessee brin=
geth an action of Trns & hath iudgemēt to re=
couer damages, hauing regard to the treble da=
mages that he shal yeld to him in the reuerſion.
And after he in the reuerſion before actiō of wast
ſued, dieth: ſo that the action of wast is thereby
extincted, then y tenāt for terme of life (though
he may ſue execution of y ſaid iudgement by the
law) yet he may not do it by cōſcience, for in cō=
ſcience he may take no more thē he is hurted by
the ſaid treſpas, becauſe he is not charged ouer
with the treble damages to his leſſour.

Note

*He in y re=
uerſion dieth*

Alſo it is to vnderſtād where a lawe is grou=
ded vpon a preſumption, y if the preſumption bee
vnttrue, then the lawe is not to be holden in con=
ſcience. And now I haue ſhewed thee ſomewhat
how y queſtiō, that is to ſay: where y lawe ſhal
be ruled after conſcience. I pray thee ſheſſe mee
whether there bee not like diuerſities in other
lawes, betwixt lawe and conſcience. D. Yes
verely, very many wherof thou haſt recited one
before, where a thing that is vnttrue is pleaded,
& proued, in which caſe iudgement muſt bee ge=
uen according as wel in the lawe Ciuile, as in
the lawe Canon. And an other caſe is, y if the
heire make not his inuentory, he ſhal be bounde
after the lawe Ciuile to al the debts though the
goods amount not to ſo much. And the lawe Ca=
non is not againſt that lawe, and yet in conſci=
ence the heire which in the lawes of Englande
is called an executor is not in y caſe charged to
the debts, but according to y value of the goods.

*Judgment
ſhall be*

*reſor y p
ſo ſhall
be charged
wth debts*

E. ij.

And

The xx. Chapter.

And now I pray thee shew me some cases wher conscience shal be ruled after the lawe. S. I will with good wil shew thee somewhat as me thinketh therein.

¶ Here foloweth diuers cases where conscience is to bee ordred after the lawe.

The xx. Chapt.

Mofa
The eldest sonne shall haue and enioy his fathers landes at the common lawe in conscience, as he shal in y^e lawe. And in Burghenglissh the yonger sonne shal enioy the inheritance, and y^e in conscience. And in Gavelkind al the sonnes shal inherite the land together as daughters, at the common lawe & that in conscience. And there can be none other cause assigned why conscience in the first case is with the eldest brother, and in the second with the yonger brother, and in the third case with all y^e brethren. But because the lawe of England by reason of diuers customes doth sometime geue the lād wholy to the eldest sonne, sometime to yongest, and sometime to all.

¶ Also if a man of his mere motion make a feefement of two acres of land, lying in two seueral shires, & maketh livery of seafon in the one acre in the name of both. In this case the fessfee hath right but only to y^e acre whereof livery of seafon was made, because he hath no title by the lawe: but if both acres had ben in one shire he had had good right to both. And in these cases y^e diuersity of y^e law maketh the diuersity of conscience.

¶ Also

*livery of
seafon out
of y^e shire
ad vantage
of mil*

Also if a man of his mere motion make a feoffment of a manor & saith not to haue & to hold &c. with the apurtenances, in that case þ feoffee hath right to the demesne lands & to the rents if there be atturment & to the common pertainings to the maner, but he hath neither right to þ aduowsons appendant if any be, nor to the villeins regardat, but if this terme with thapurtenances, had bene in the deede, þ feoffee had right in conscience aswel to the aduowsons & villeins, as to the residue of the manor, but if þ king of his mere motiō geue a manor with the apurtenances, yet the donee hath neither right in law nor conscience to the aduowsons nor villeins. And þ diuersity of the law in these cases maketh the diuersities of conscience.

Also if a mā make a lease for terme of yeres yelding to him and to his heires a certaine rent vpon condition, þ if the rent be behinde by xl. daies &c. þ then it shalbe lawfull to the lessour & his heirs to reentre. And after the rent is behinde, the lessour asketh the rent according to law & it is not paid, the lessour dieth, his heire entreth. In this case his enter is lawfull both in law & conscience: but if the lessour had died before he had demaunded the rent, & his heire demaunded the rent, & because it is not payd he reentreth in þ case his reentre is not lawfull neither in law nor in conscience.

Also if the tenat in dower lose her land & die before þ corne be ripe, the corne in conscience belongeth to her executors, & not to him in þ reuerſion: but otherwise it is in conscience of grasse & fruites

E.ij.

part 1

Note w^{ch} appurtenances is not mentioned

if A by y^e King in mere motion

re^{nt} for y^e rent of y^e land is lawfull and w^{ch} not

part 13. b. 100. for dower in dower not

The xx. Chapter.

fruites. And the diuersity of the lawe maketh there also the diuersity in conscience.

*no for ynd
void in law
and conscience*

Also if a man seised of lands in his demesne, as of fee, bequeth the same by his last will to another and to his heires, & dieth: In this case the heire notwithstandinge the will hath right to the land in conscience. And the reason is, because the law iudgeth that wil to be boide, & as it is boide in the law, so is it boide in conscience.

nota

Also if a man graunt a rent for terme of life & make a lease of land to y^e same graunter for time of life, & the tenat alieneth both in fee: In this case he in the reuerſion hath good title to y^e lād both in lawe and conscience, & not to the rent. And the reason is because the land by the alienation is forfait by y^e law to him in the reuerſion and not the rent.

¶ Addition.

*no for y
man and
marryd*

Also if landes be geuen to two men and to a woman in fee, & after one of the men entermarrieth with the woman, & alieneth the land and dieth: In this case the woman hath right but onely to the third part, but if y^e man & the woman had bene married together before the firste ſeſſemēt, thē the womā notwithstandinge the alienation of her husband ſhould haue had right in law and conscience to the one halfe of the land. And ſo in theſe two caſes conſciēce doth followe the law of the realme. Also if a man haue two ſons, one before elpouſels, & another aft elpouſels, and after the father dieth ſeised of certaine lands: In that caſe the yōger ſonne ſhall enioy the landes in this realme as heire to his father both

*no for y
sonne
of alme
ſon*

both in law & conscience. And þ cause is because
 þ sone bozn after espousels, is by þ law of this
 realme þ very heire, & þ elder sone is a bastard,
 And of these cases & many other like in þ laws
 of England may be formed þ Silogisme of co-
 science oz the true iudgemēt of conscience in this
 maner. Sinderelis ministreth the maiorz thus. *note*
 Right wisenes is to be dōe to euery mā, vpon
 which maiorz þ law of Englād ministreth the
 minorz thus. The inheritāce belōgeth to þ sone
 bozne aft espousels, & not to þ sone bozn before
 espousels: thē consciēce maketh the cōclusion, &
 sayth: therfore þ inheritāce is in conscience to be
 geuē to the sone bozne aft espousels. And so in
 other cases infinite may be formed by the law þ
 Silogisme oz the right iudgemēt of conscience.
 wherefore, they that be learned in the law of þ
 realm say þ in euery case where any law is or-
 deined for þ dispositiō of lands & goods, which
 is not against the law of god, nor yet against þ
 law of reason, that the law bindeth al thē that
 be vnder the law in the court of consciēce, that
 is to say, inwardly in his soule. And therfore it
 is sōewhat to maruel that spirituall men haue
 not indeuored thēselues in times past to haue
 more knowledg of þ kigs laws thē they haue
 dōe, oz that they yet do, for by þ ignorance ther
 of they be oft times ignorant of that þ shoulde
 order thē accoꝝding to right & iustice, aswel cō-
 cerning them selues as other that cōe to them
 for counsaile. And now for asmuch as I haue an-
 swered to thy questiōs aswel as I cā: I pray
 the þ thou wilt shew me thy opinion in diuers

The xxj. Chapter.

cases formed vpon the law of England wher-
in I am in doubt, what is to be holden therein
in conscience. D. Shewe me thy questions & I
wil say as me thinketh therein.

¶ The first question of the student.

¶ The xxj. Chapter.

I f an infant that is of the age of xx. yere and
hath reason and wisdom to gouerne hym-
selfe selleth his lād, & wth the money therof buy-
eth other lād of greater value thē the first was
& taketh the profits thereof. whether may that
infant aske his first land againe in cōscience, as
he may by the lawe. D. what thinkest thou in
that questiō. S. Me semeth that forasmuch as
the law of England in this article is groundēd
vpon a presumption, that is to say, that infāts
commonly afore they be of the age of xxj. yeres
be not able to gouerne themself, that yet for as-
much as that presumption faileth in this infāt
that he may not in this case with cōscience aske
the lande againe that he hath sold to his great
auauntage as before appeareth. D. is not thys
sale of the infant & the fessment made therupō
if any were, vopdable in the lawe. S. Yes ve-
rely D. And if the fessēe haue no right by the
bargaine, nor by the fessment made thereupon
whereby should hee then haue right thereto as
thou thinkest. S. By conscience as mee thin-
keth, for the reaso that I haue made before D.
And vpon what law should that conscience be
grouēd

*note vpon
y^e infant
at 20 y^ears
of age
alieneth.*

grounded, that thou speakest of, for it cannot be grounded by the law of the realme, as thou hast said thy selfe. And me thinketh that it cannot be grounded vpon y^e law of god, nor vpon y^e lawe of reason, for feoffments nor contracts bee not grounded vpon neither of those lawes, but vpon the law of man. S. After the law of propertie was ordeined the people might not cōueniently liue together without contracts, & therefore it seemeth that cōtracts be grounded vpon y^e law of reason, or at least vpon the law that is called *ius gentiū*. D. Though contracts be grounded vpon that law that is called *ius gentium*, because they be so necessary and so generall among al people, yet that proueth not that contracts be grounded vpon the law of reason, for though y^e law called *ius gentium* bee much necessary for the people yet it may be chaūged. And therefore if it were ordeined by statute y^e there should be no sale of lād, ne no cōtract of goods, and if any were, that it should be boide, so that euery man should cōtinue stil seiled of his lāds & possessed of his goods, the statute were good. And then if a mā against that statute sold hys land for a sūme of money, yet the seller myght lawfully retaine his land according to the statute. And then he were bounde to no more but to repay the money that he receyued with reasonable expēces in that behalfe, and so in like wise me thinketh that in thys case the infant may wyth good conseyence reenter into hys first lande, because the contract after the *Maximes* of the lawe of the Realme is boide, for

feoffments & contracts grounded vpon y^e law of man

the infant may reenter

as

The xxij. Chapter.

as I haue heard y^e maximes of the law be of as great strength in the law as statutes. And soe thinke y^e in this case the infant is bound to no more, but only to repay the money to him that he sold his lād vnto, with such reasonable costs and charges as he hath sustained by reasoⁿ of y^e same. But if a man sel his land by a sufficiēt & lawfull contract, though there lacke liuery of seisoⁿ or such other solemnities of the law, yet the seller is bound in conscience to perfo^rme y^e cōtract, but in this case y^e contract is insufficiēt, & so me thinketh great diuersitie betwixt the cases. S. For this time I hold me cōtēted with thy opinion.

The second question of the Student.

The xxij. Chapter.

I f a man that hath landes for terme of life be impanelled vpon an inquest, & therupon leueth issues & dieth, whether may those issues be leuied vpon him in the reuersion in conscience as they may be by the law. Q. If they may be leuied by the law, what is y^e cause why thou doubt whether they may be leuied by conscience. S. For there is a maxime in y^e lawes of England, that where two tytles runne together, the eldest title shalbe preferred. And in this case the title of him in the reuersion, is before the title of the forfeiture of y^e issues. And therefore I doubt whether they may be lawfully leuied.

For pay
of money

Nota

hac
fals
for
of life
impanelled

Nota

D. by that reason it seemeth thou art in doubt what the law is in this case, but that must necessarily be knowen, for els it were in vaine to argue what conscience wil therein. **S.** It is certain y^e the law is such, & so it is likewise if the husband forfeit issues, & die, those issues shal be leuied on the lands of the wife. **D.** And if the law be such, it seemeth that conscience is so in likewise, for sith it is the law y^e for execution of Justice every mā shalbe impanelled whē neede requireth, it semeth reasonable, y^e if he will not appeare y^e hee should haue some punishment for his not appearāce: for els the lawe should bee clerely frustrate in y^e point. And the paine as I haue heard is y^e he shal lose issues to y^e king for his not appearance, wherfore it semeth not inconvenient nor against conscience, though y^e law be y^e those issues shalbe leuied of him in the reuersion, for that the condition was secretly vnderstād in the law to passe to the lease when the lease was made. And therfore it is for the lessor to besware & to preuent y^e daunger at the making of the lease, or els it shalbe adiudged his owne default. And thē this pticuler maxime wherby such issues shalbe leuied vpon him in y^e reuersion is a pticuler exceptiō in y^e lawe of England frō a general maxime y^e thou hast remēbred before, y^e is to say, that where ij. titles run together, that the eldest title shalbe preferred, & so in this case the general maxime in this point shal holde no place, neither in law, nor in cōsciēce, for by this pticuler maxime the strength of y^e general maxime is restrained to euery intent, that is to say, as wel in law as in conscience.

The

*It is to be knowne
that the lawe
is such that
the husband
shall lose
his wife's
issues.*

*Condition to
pass the lease
to the lessor*

The xj. Chapter.

¶ The third question of the student.

¶ The xxij. Chapter.

I f a tenaunt for terme of life, or for terme of
yeres doe wast whereby they be bound by the
lawe to yeld to him in the reuerſion treble da-
mages, & ſo ſhall forfeit y^e place waſted, whe-
ther is he alſo bound in conſcience to pay thoſe
damages, & to reſtore y^e place waſted immedi-
ately after the waſt doe, as he is in y^e ſingle da-
mages, or y^e he is not bound therto til y^e treble da-
mages, & place waſted, be recovered in y^e king
court: D. Before iudgement geuen of the tre-
ble damages & of y^e place waſted he is not bound
in conſcience to pay them. For it is vncertain
what he ſhould pay, but it ſufficeth y^e he be redy
til iudgement be geue to yelde damages accor-
ding to y^e value of y^e waſt, but after y^e iudgement
geuen, he is bound in conſcience to yeld y^e trea-
ble damages, & alſo the place waſted. And the
ſame lawe is in al ſtatute penal, y^e is to ſay, y^e man
is bound in conſcience to pay the penalty til
it be recovered by the lawe. S. whether may he
that hath offended againſt ſuch a ſtatute penal
defend the action and hinder the iudgement to
the intet he ſhould not pay y^e penalty, but one-
ly ſingle damages. D. If the action be taken
rightwiſely according to the ſtatute and vpon
a juſt cauſe, the defendaunt may in no wiſe de-
fend the action, unleſſe he haue a true dilatory
matter to pleade, which ſhoulde be hurtfull to
him if he pleaded not, though he be not bound

*Before iud-
gement geuen
not bound in
conſcience*

Dilatory matter

to pay the penalty till it be recovered.

The fourth question of
the Student.

The xxiiij. Chapter.

If a man enfeffe other in certaine lande vpon
condition that if he enfeffe any other: that it
shalbe lawfull for the feoffour and his heires to
reëter &c. whether is this cōditiō good in cōsci-
ence though it bee voyde in the lawe. **D.** What
is the cause why this cōditiō is void in *the* law.
S. The cause is this, by the lawe it is incident
to every state of fee simple, that he that hath the
estate, may lawfully by the law & by the gift of
the feffor, make a feffement therof. And then whe
the feffor restraineth him after, *he* shall make
no feffement to no man against his owne former
graunt, & also against the purty of the state of
a fee simple, the law iudgeth the condition to be
void, but if the condition had ben, that he should
not haue enfeffed such a man, or such a man, that
condition had bene good, for yet he might infe-
fe other.

D. Though the said condition bee against the
effect of the state of a fee simple, and also against
the lawe. Neuertheles it is not against the in-
tent that the parties agreed vpon, & that at the
time of the liuery. And for asmuch as the intēt
of the party was, that if the feffee infeffed any
man of the lande, that the feffour shoulde en-
ter, and to that intēt the feffor toke the state and
after

The xxiiij. Chapter.

after breake the intent, it seemeth þ the lande
conscience should returne to þ feoffour. **S.** The
intent of the parties in the lawes of England
is void in many cases, that is to say, if it be
ordred according to the law. And if a mā of
mere motion without any recompence intend
to geue landes to an other, & to his heires make
a deede vnto him, whereby hee geueth him the
lands, to haue and to hold to him for euer, int
ding that by þ word (for euer) the lessee shoul
haue the land to him & to his heires, in this ca
his intent is boide, and the other shall haue th
lād only for terme of life. Also if a mā geue lād
to another & to his heires for terme of xx. yeres
intending þ if the lessee dye within the terme
thē his heires should enioy the lande during th
terme: In this case his intēt is boide, for by th
law of the realme al chattels real and personall
shal go to the executors, and not to þ heire. Also
if a man geue lands to a man and to his wife,
to the third parson, intending þ every of the
should take the third part of the lande as 3. co
mon parsons should, his entent is boide for th
husband & the wife as one person in þ law shal
take only þ one halfe & the iij. person the othe
half, but these cases be alway to bee vnderstan
where the said estates be made without any re
compence. And for asmuch as in this princip
case, the intent of the feoffour is grounde
gainst the lawe: and that there is no recōpen
appointed for the feoffement: me thinketh th
the feoffour hath neither right to the lande b
law or cōsciēce, for if he should haue it by cōsci
ence

+ fathels & all
Personal shal
go to executor
of the

Ego husband
and wife
et and in
Law

ence that cōscience should be grouded vpon the law of reason & that it cannot, for cōditions be not grouded vpon the law of reason, but vpon the maximes & customes of the realme, & therefore it might be ordeined by statut, & al cōditions made vpon land should be voide. And whē a cōdition is voide by the maximes of the law, it is as fully void to euery entent, as if it were made voide by statute, & so me thinketh y^e in this case the fessour hath no right to the land in law nor in cōscience. D. I am content thy opinion stād till wee shall haue hereafter a better leysure to speake farther in this matter.

*conditions be
grouded vpon
maxims and
customs*

The first question of the
Student.

The xxv. Chapter.

If a fine with Proclamation be leuied according to the statute, and no claime made within fine yerres &c. whether is the right of a Stranger extinded thereby in cōscience, as it is in the lawe. D. Upon what consideration was that statute made. S. That the right of lands and tenements might be the more certainly known & not to be so vncertaine as they were before that statute. Doctor. And when any law of man is made for a cōmon wealth, or for a good peace & quietnes of y^e people, or for any incōuenience or hurt to be saued from them, that law is good, though percase it extinde the ryght of a stranger, and must bee kept in the Courte of con-

The xxv. Chapiter.

consciēce, for as it is said before in p̄ iij. Chap-
 ter. Wh̄ laws rightwisely made by man, it ap-
 peareth who hath right to p̄ landes & goods, for
 whatsover a mā hath by such a lawe hee hath it
 rightwisely. And whatsoever he holdeth agāst
 such a lawe he holdeth vnrighwisely, and fur-
 thermore as it is sayd there, all lawes made by
 man which be not contrary to the lawe of God
 must be obserued & kept, and that in consciēce.
 And he that despiseth them, despiseth God
 & hee that resisteth them, resisteth God, also it is
 to be vnderstand, that possessions, and the right
 thereof be subiect to p̄ laws, so that they there-
 fore with a cause reasonable may be trāslated &
 altered from one man to another, by the act of the
 law. And of this cōsideration p̄ lawe is groun-
 ded that by a cōtract made in faires & markets,
 the property is altered, except p̄ property be to
 the king, so that p̄ buier pay toll, or doe such o-
 ther things as is accustomed there to be done vpon
 such contracts, & that p̄ buier knoweth not
 the former property. And in p̄ lawe Ciuile there
 is a like lawe, that if a man haue another mans
 good with a title 3. yere, thinking that he hath
 right to it, he hath the very right vnto p̄ thing,
 and that was made for a lawe to the entēt that
 the property & right of thigs should not be vn-
 certaine: and that variance and strife should not
 bee amonge the people. And forasmuch as the
 saide statute was ordeyned to geue a certai-
 ntye of title in the lands and tenenements com-
 prised in the fine. It seemeth that that fine
 extincted the tytyle of all other, as well in

con-

*lawe made
by man not
contrary to
gode lawe
p̄ of p̄*

*L
Ciuile*

conscience as it doth in þ lawe. And sith I haue answered to thy question: I pray thee let me know thy minde in one question cōcerning tailed lands, & then I wil trouble thee no farther at this time.

¶ A question made by the doctour, howe certain recoveries that bee vsed in the kinges courts to defete tailed land, may stand with conscience.

The xxvj. Chapter.

I haue heard say that when a man that is seized of landes in the taile selleth the lande. That it is commonly vsed that he þ buieth the land shal for his suerty, & for þ auoiding of the taile in that behalfe, cause some of his friendes to recover the said lands against the said tenant in taile: which recovery as I haue bene credibly enformed shalbe had in this maner: þ demaundants shal suppose in their writ & declaration þ the tenant hath no entre, but by such a straūger as the buier shal list to name & appoint, where in deede the demaundants neuer had possession thereof nor yet þ said straūger. And thereupon the said tenāt in taile shal appeere in the court, & by assent of the parties, shal vouch to warrant one þ he knoweth wel hath nothing to yelde in value. And þ vouchee shal appeare & þ demaundants shal declare against him, and thereupon he shal take a day to emparle in the same terme. and at that day by assent & couen of the parties

f. 1.

hee

The xxvj. Chapter.

*default
in despit
of court*

he shal make default, vppon which default because it is a default in despyte of the court, the demaundantes shal haue iudgement to recouer against the tenant in taile, and he ouer in value against the bouche, and this iudgement and recouerie in value, is taken for a barre of the taile for euer, how may it therfore be taken that the law standeth with conscience, that as it semeth alloweth & fauoureth such fained recoveries.

S. If the tenant in taile sell the lande for a certayne summe of money as is agreed betwixt them at such a price as is comonly bled of other lands, & for the luerty of the sale suffereth such a recovery as is aforesayde, what is the cause that moueth thee to doubt whether the said contract or the recovery made therupon, for y^e suerty of the buier that hath truly paid his money for the same, should stand with conscience.

D. Two thinges cause mee to doubt therein, one is for that, y^e after our Lord had geuen the land of behest to Abraham & to his seede, y^e is to say, to his childre in possessiō alway to continue he said to Moyles as it appeareth Leuiti. xxv. the land shal not be sold for euer, for it is mine, And then our Lord assigned a certayne maner how the lande might be redeemed in the yeare of Iubilie if it were sold before: and forasmuch as our Lord woulde that the lande so geuen to Abraham and his children should not be sold for euer, it semeth that he doth against the ensample of God, that alieneth or selleth the land that is geuen to him and to his childre as lands entailed be geuen.

Nota

Another

Another cause is this: it appeareth by the commaundement of God that thou shalt not couet the house of thy neighbour &c.

And if that concupiscence be prohibited, more strōger thē the vnlawful taking & withholding thereof is prohibited: and for asmuch as tayed land when the auncestor is deade, is a thinge that of right is belongeinge to his heire for that hee is heire according to the gift, howe may the land with right or conscience be holden from him.

S. Notwithstandinge the prohibition of almighty God: wherebvy the land that was geuen to Abraham and to his seede myght not bee aliened for euer, yet lāds within walled towngs might lawfullye be aliened for euer except the lands of the Levites, as it appeareth in the said Chapter of Leuitici xxv. And so it appeareth v̄ the said prohibition was not general for euery place and that amonge the Iewes. And it appeareth also that it was geuen only for Abraham and his childrē, and so it was not general to al people. And it appeareth also that it extended not but onely to the lande of promission as it appeareth by the wordes of the said Chapter, where it is said thus, al the regyon of your possession shalbe sould vnder the conditiō of redeming, where by appeareth v̄ lands in other countries bee not bounde to that condition, and as they bee not bounde to that condition: by the same reaso it folloiweth that they be not bounde to the same succession. Therefore that sayd lawe that wil that the land geuen to Abraham & to his seede shal not be solde for euer

f. ij.

bindeth

Land in o-
ther countries
be not bound
to that con-
dition.

The xxvj. Chapter.

bindeth no land out of the land of promise, & some men wil say, that sithen the passion of our Lord was promulgate and knowen, it bindeth not there. And to the seconde reason which is groundeth vpon the commaundement of God. It must needes be graunted y it is not lawfull to any man vnlawfully to couet the house of his neighbour, & that the more stronger he may not vnlawfully take it from him: but the it remaineth for thee yet to proue how in this case this tailed lande that is solde by his auncester, and wherof a recovery is had recorded in the kings court, may be said y lands of the heire. D. That may be proued by the law of the realme, that is to lay by the statut of westminster y second the first chapter, where it is said thus. The will of the geuer expressely cōtained in the dede of his gift, shalbe from henceforth obserued: so y they to whom the tenementes bee so geuen shal not haue power to alien, but that the landes after their death shal remaine to the issue or retourne to the donoure if the issue faile, by the which statute it appeareth euidently that though they to whom the tenements were so geuen, aliened them away, that yet neuerthelesse they in lawe and cōscience by reason of the said statut ought to remayne to their heires accordeinge to the gift, for it is holden commonly by all Doctors that the commaundements and rules of the lawe of man or of a positue lawe that is lawfully made, bynde all that bee subiects to that lawe accordeinge to the mynde of the maker, and that in the court of conscience.

¶

*to statute
of westminster
2: 1:
ra. 2: 1:*

S. Doeſt thou thinke that if a man offend a-
gainſt a ſtatute penal that hee offendeth in con-
ſcience? admitte that he doe it not of a wilful
diſobedience for that he wil not obey the law,
for if he doe it of diſobedience I thinke he of-
fendeth. **D.** If it be but onely a ſtatute that
is called Populare, it bindeth not in conſcience
to the payment of the penaltie, tyll it be reco-
uered by the lawe. And then it doth bynd in
conſcience, but if a ſtatute be made principally
to remedye the hurt of one party, and for that
hurt it geueth a penaltie to the partie, in that
caſe the offendour of the ſtatute is bounde im-
mediatly to reſtoze the damages to the value
of the hurte: as it is vpon the ſtatute of waſt,
but the penaltie aboue the hurt he is not bound
to pay till iudgement bee geuen as it is layde
before: but ſtatutes by the which it is aſſig-
ned who ſhall haue right or proprietie to theſe
landes and tenements, or to theſe goods or cat-
tels, if it be not againſt the law of God nor a-
gainſt the lawe of reaſon, binde al them that be
ſubiect to the law, in law & conſcience, & ſuch a
ſtatute is the ſtatute of Weſtm. 2. whereof wee
haue treated before, wherefore it muſt bee ob-
ſerued in conſcience.

S. But ſome holde that the ſtatute of Weſt-
minſter the ſeconde was made of a ſingularity
and preſumption of many that were at the ſaid
pliamēt for exaltig & magnifying of their own
bloud, & therfore they ſay that y^e ſtatute made
by ſuch a preſumption bindeth not in conſcience

I. iii.

The xxvj. Chapter.

D. It is very perilous to indge for certeyne that the said statute was made of such a presumption as thou speakest of, for there be many considerations to proue that the saide statute was not made of such presumption, but rather of a very good minde of al the parlyament, or at the least of the more part thereof, and for the common wealth of all the realme, and firste in the king the which in the said parliament was the heade and most chiefe and principall part of the parliament (as hæ is in euery parliament) cannot be noted no such entent. For it is not necessary nor it was not then in vse, that lads of the Crowne should be entailed, and in spiritual men ne yet in certeine Burgeles & Citizens of the said parliament which at that time had no land, there can be noted no such singularitie, nor yet in the noble men and gentlemen nor such other as were of the saied parliament and hadd landes and tenementes. It is not good to iudge in certeine that they did it of such a presumption, but it is good and expedient in this case as it is in other cases that be in doubt to holde the surer way, and that is that it was made of charitie, to that intent that he nor the heires of him to whom the lande was geuen should not fall into extreme pouertie, and there by happely to runne into offence against God, and though it were true as they saye that it was not made of charptie but of presuption & singularitie as they speake of: Nevertheless for as much as the statute is not against the law of god nor against the law of reaso, it must be

of charitie

be obserued by al them that be subiectes vnto
that law. For as John Gerson saith in y^e trea-
tise y^e he intituled in latin. De vita spiritali anima:
the fourth lesson, & y^e third consolary: saith that
God wil that makers of lawes iudge onely of
outward things and reserue secret thinges to
him. And so it appeareth that manne may not
iudge of the inward intent of the deede, but of
such things as be apparaunt and certeine, but
yt is not apparant that there was any such
corrupt intent in the makers of the said statut,
how may it therefore be said that that lawe is
good or rightwyle, y^e not onely suffereth such
things against the statute, but also against the
commaundement of God? S. To that some
answere & say, that when the lande is solde &
a recouerie is had therupon in the kings court
of record, y^e it suffiseth to barre y^e taile in con-
sciēce, for they say that as y^e taile was first or-
deined by y^e law, so they say that by the lawe it
is adnulled againe. D. We thou thy selfe iudge
if in that case there be like authority in y^e ma-
king of y^e taile, as there is in y^e adnulling ther-
of, for it was ordeined by authority of p^laint,
the which is alway take for y^e most high court
in this realme before any other, & it is adnulled
by a false supposel, for y^e, that they y^e be named
demaundantes should haue right to the lande
where in trouth they had neuer right thereto,
wherupō followeth a false supposel in y^e writ,
& a false supposel in y^e declaratiō & a voucher to
warrant by couin of such a person as hath no-
thinge to yelde in value, & therupon by couin

¶.iiij.

and

*whereas in
y^e King's Court*

The xxvj. Chapter.

& collusion of þ parties follosweth þ default of the vouche, by the which default the iudgemēt shalbe geuen. And so al the iudgement is deriued and grounded of the vnttrue supposel & couin of þ parties, wherby the law of the realme þ hath ordeined such a writ of entre to help thē þ haue right to lāds or tenemēts is defrauded, the court is deceined, þ heire is disherited, & as it is to doubt, the buier & þ seller & their heires and assignes hauing knowledge of þ taylor be bound to restitutio, & verely I haue heard many times, þ after þ law of the realme such recoveries should be no barre to þ heire in þ taylor, if the law of the realme might be therein indifferently heard. S. I. cānot see but þ after þ law of the realme it is a barre of the taylor, for when þ tenant in taylor hath vouched to warrantie, & the vouchee hath appeared & etred into þ warranty, & after hath made default in despyte of þ court, whereupon iudgement is geue for þ demandant against þ tenāt, & for þ tenāt þ he shal recover in value against þ vouchee, if the heire in þ taylor should after bring his formedō & recover þ lāds entailed, & after þ vouchee purchaseth lands, then should the heire also haue executio against him to þ value of the lands entailed as heire to his auncestor þ was tenant in the first action, & so he should haue his owne lāds, & also the lands recovered in value, & therefore because of þ presumptio that þ vouchee may purchase lāds after þ iudgemēt, some be of opinion that it is in the law a good barre of the taylor.

D. I suppose that in that case thou hast put that

Nota

*execution
against
þ vouchee*

that the vouche may barre the heire in taile of his recovery in value because he hath recovered the first lands. Neuerthelesse I wil take a res-
pit to be aduised of that recovery in value. And if thou can yet shew me any other cōsideration why the said recoveries should stand in consci-
ence, I pray thee let me heare thy cōcept ther-
in, for the multitude of the said recoveries is so
great that it were great pity that al shoulde
be bound to restitution that haue lands by such
recoveries, with there is none that (as farre as
I can heare) disposeth them to restore.

Nota

S. Some men make an other reason to proue
that the said recoveries should be sufficient by
the law to auoyd the statute of West. then & yf
they be sufficient therto, they be sufficiēt in co-
science. D. What is their reason therein S. In
the vij. yere of king Henry the viij. the iij. cha.
among other things it is enacted, that all re-
couerers their heires and assignes may aduowse
and iustifie for rentes seruices, and customes
by them recovered, as they against whom they
recovered might haue done. And then they say
that when the Parliament gaue to such reco-
uerers authoritie to aduowse and iustifie for
such rents, customes, and seruices as they re-
covered, that the intent of the Parliament was
that such recouerers should haue right to that,
for the which they should aduowse or iustifie, for
els they say that it shoulde be in vaine to geue
them such power, & that Parliament should else
be taken in maner as fortifiers of wrongfull title
& so they say that such recouerers by reason of y
said

*Consent of
Parliament*

The xxvj. Chapter.

said statute haue right by the lawe. D. That statute as it seemeth was made onely to geue to the recouersers a fourme to aduowse & iustifie which they had not before though they had recovered vpon a good title. And the cause why they had no fourme to auowse or iustifie before the said statut was, for as much as the recouersers did not by the pretence of their action affirme the possession of him or the against whom they recovered, nor claimed not by them, but rather disaffirmed & destroyed their estate. And therefore they cannot alledge any continuance of their title by them, as they may that haue rets or seruices, or such other of the graunt of other by deede or by fine. And therefore as it seemeth the most principal intent of the statute was, by such recoveries should auowse & iustify for rets seruices and customes as they should or might doe that had them by fine or deede not hauinge any respect as it semeth whether they recovered against tenat in fee simple or in fee taile, nor whether by recoveries were had vpon a rightfull title. And therefore as me semeth the said stat. neither affirmeth nor disaffirmeth by title of recoveries wherby they do auowse, for if a man had right before the recovery by right should remain vnto him notwithstanding the said statut, & so me semeth that the title of them that haue the lands entailed by such recoveries is nothing forfeited nor affirmed by the said estatute but that they are in by the same cas as they were before, what thinkest thou therin? S. This matter is great for as thou saist there be so many by haue tailed lands

*right doer not
suffering no*

lands by such recoveries, & it were great pitie
and heauines to condemne so many persons &
to iudge that they al were bound to restitution.
For I think there be but few in this Realme
that haue lands of any notable value, but that
they or their auncestours, or some other by
whom they clayme, haue had parte thereof by
such recoveries. In so much that Lords spiri-
tual and temporal, Knightes, Squires, ryche
men and poore, Monasteries, Colledges and
Hospitals haue such lands, for such recoveries
haue bene vsed of longe time, who may thinke
therefore without great heauinesse that so ma-
ny men should be bound to restitutyon & that
yet as thou saiest, no manne dispolet hys to
make restitution. And so I am in a manner
perplexed & wote not what to say in this case,
but that yet I trust that ignorance may excuse
many persons in this behalfe.

*ignorance
may excuse*

D. Ignorance of the deade may excuse, but
ignorance of the law excuseth not, but it be in-
vincible, that is to say that they haue doe that
in them is to knowe the trouth, as to counsaile
with learned men, & to aske them what y^e law
is in that behalfe, & if they answer them y^e they
may do this or that lawfully, the they be ther-
by excused in conscience, but yet in mans lawe
they be not thereby discharged, but they y^e haue
take vpon the to haue knowledge of the law be
not excused by ignorance of y^e law, ne no more ar
they that haue a wilful ignorance & that would
rather be ignorant then to knowe the trouth.
And therefore they wil not dyspose them to
aske

Note

The xxvj. Chapter.

aske any counsaile in it, & if it be of a thing that
 is against the law of God or the law of reaso,
 no man shalbe excused by ignozace, and so there
 be but few that be excused by ignozauce. S.
 what the shal we cōdempne so many & so no-
 table men. D. we shal not cōdempne them but
 we shal shew the their peril. S. Yet I trust y
 their danger is not so great that they should be
 bound to restitution. For John Gerson saith
 in the said booke called De unitate ecclesiastica con-
 sideratione secunda, quod communis error facit ius.
 That is to saye a common error maketh a
 right, of which wordes as it semeth some trust
 may be had, that though it were fully admitted
 the said recoveries were first had vpon an vn-
 lawfull ground and against the good order of cō-
 science, that yet neuerthelesse for asmuch as
 they haue bene vsed of long time so that they
 haue bene taken of dyuers men that haue bene
 right wel learned, in maner as for a lawe, that
 the buyers partly be excused so that they be not
 bound to restitution. And mozeouer it is cer-
 tain that that statute of westm the second, nor
 none other statute made by manne cannot be of
 greater value or strength, then was the bond
 of matrimony that was ordeined of God. And
 though that bond of matrimony was indissol-
 luble, yet neuerthelesse Moyses suffred a bil of
 refusel of the Jewes, which in latin is called
 Libellum repudij, & so they myght thereby for-
 sake their wiues, as it appereth Deutro. xxiij.
 & therefore like as a dispensation was suffered
 against that bōd, so it semeth it may be against
 thys

not bound to
 restitution

this statute. D. As to that reason that thou hast last made of a bill of refusell, let all purchasers of land here what our lord saith in þe gospel to the Iewes, of that bill of refusell. Mathew xix. wher he saith thus, for the hardnes of your hartes. Moises suffered you to leaue your wiues, for at þe beginnig it was not so, of which words Doctours hold commonly that though such a bil of refusell was lawfull so þe they that refused their wiues thereby, should be without paine in the law, that yet it was neuer lawfull so that it should be without sinne. And so likewise it may be saide in this case þe such recoveries be suffered for the hardnes of the hartes of Englishe men, which desire land & possession wth so great greedines that they cannot bee wythdrawen from it neither by the law of God nor of the realme. And therfore the riche mē should not take the posselliōs of poore men from thē by power, wthout colour of title, that is to say eyther by open disseison, or by the only sale of the tenant in taile, and so to holde them against the expresse wordes of the statute: such recoveries haue bene sufferd. And though for their great multitude they may happely be without payne as to the law of the Realme: yet it is to feare that they be not without offence, as against god, and as to the other reason, that a common error should make a right, those words as me semeth be to be thus vnderstād, þe a custōe bled against þe law of man shalbe taken in some countries for law, if the people be suffered so to cōtinue. And yet some menne call such a custome an erreure because

*bil of refusell
lawfull*

The xxvj. Chapter.

because that the continuance of that custome against the law was partly an error in the people, for that y^e they would not obey the lawe that was made by their superiours to the contrary of that custome, but it is to be understood that the said recoveries though they have been long used, may not be taken to have y^e strength of a custome, for many as well learned as unlearned have alway spoken against them & yet doe. And furthermore as I have heard say of custome or a prescription in this realme against the statutes of the realme prevaile not in y^e law.

S. Though a custome in this realme prevaileth not against a statute as to the law, yet it semeth y^e it may prevaile against y^e statute in conscience, for though ignorance of a statute excuseth not in the law, neuer theles it may excuse in conscience & so it semeth that it may doe of a custome.

D. But if such recoveries cannot be brought into a lawfull custome in the lawe, it seemeth they may not be brought into a custome in conscience, for conscience must alway be grounded vppon some lawe, and in this case it cannot be grounded vppon the lawe of reason, nor vppon the lawe of G^oD: and therfore if the lawe of man serue not, there is no grounde wherevpon conscience in this case may be grounded, & at y^e beginning of such recoveries they were taken to be good because the law should warrant them to be good, and not by reason of any custome, and soe if the reason of the lawe will not serue in the recoveries, the custome cannot helpe, for an euill custome is to be put away.

*Note for
Customs*

way. And therefore me semeth that the recoveries be not without offence against GOD, though happely for their great multitude, and that there should not bee as it were a subuersion of the inheritaunce of many in this Realme as wel of spiritual as temporal, they bee without payne in the laswe of the Realme: excepte such recoveries as by the common course of the laswe be voidable in the laswe by reason of some vse or of some other special matter: but what paine that is I wil not temerously iudge, but comit it to the goodnes of our lord whose iudgements be very deepe & profound, nor I wil not fully affirme that they y haue lands by such recoveries ought to be compelled to restitution, but this semeth to me to be good counsaile, that euery man hereafter hold that is certaine & leane y is vncertaine, and that is that he kepe himselfe from such recoveries, and then he shalbee free from al scripulousnes of conscience in that behalfe.

S. It semeth that in this question thou ponderest greatly the said statute of westminster the second, and that though it be but onelye a laswe made by man, that yet for asmuch as it is not against the laswe of reason, nor the laswe of GOD, thou thinkest that it must be holden in conscience, and ouer that as it seemeth thou art somewhat in doubt whether those recoveryes bee any barre to the heire in the tayle by the laswe of the Realme, vnlesse that he haue in value in deede vppon the voucher, and that thou wilt

The xxvj. Chapter.

Scrupulose
none.
wilt thereupon take a respite or thou shew thy
ful minde therein, and in likewise thou thinkest
as I take it that those recoveries cannot be
brought into a custome, but that the longer that
they be suffered to continue if they be not good
by the law, y greater is the offence against god.
And therefore thou pondrest litle that custome
but yet thou agreest that it is good to spare the
multitude of them that be past, least a subuersi-
on of y inheritace of many of this realme might
folow, and great strife and variance also, if they
should be adnulled for the time past: except there
be any other special cause to auoide them by the
law as thou hast touched in the last reason, but
thou thinkest that it were good that from hence
forth such recoveries should be clearly prohy-
bited & not be suffered to be had in vse as they
haue beene before, and thou counsailest all men
therfore to refrain themselves from such reco-
ries hereafter. D. Thou takest well y I haue
said, and accordyng as I haue ment it. S. Now
I pray thee, uth I haue hearde thy question of
these recoveries accordyng to thy desire, y thou
wouldest aunswere me to some particuler que-
stions concerning tailed lands, whereof thou
hast at this time geuen vs occasion to speake.
D. Shew mee those questions, and I wil shew
thee my minde therein with good wil.

¶ The first question of the Student concer-
ning tailed landes.

¶ The xxvij. Chapter.

If a disseisor make a gift in the taile to John at Stile, and John at Stile for the redemig of the title of the disseisor, agreeth with him that he shal haue a certaine rent out of the same land to him & to his heires, & for the suerty of y^e rent it is deuised y^e the dysseisor shal release his right in the lande &c. and that such a recovery as we haue spoken of before, shalbe had against y^e said John at Stile to the vse of the payment of the said rent and of the former taile, whether standeth that recovery well with conscience or not as thou thinkest: D. I suppose it doth for it is made for the strength and suerty of the taile which the disseisor might haue clerely defeated & auoyded if hee would, & therefore as I thinke if the said John at Stile had graunted to y^e dysseisor, only by his dede a certaine rent for the releasing of his title, y^e graunt shoulde haue bound the heires in the taile for euer. And then if y^e disseisor for his more suerty will haue such a recovery, as before appereth, it seemeth that recovery standeth with good conscience.

Nota.

S. It seemeth that thy opinion is right good in this matter. And so it appeareth that with a reasonable cause, some pticuler recoveries may stande both with lawe, and conscience to barre a taile.

The seconde question of the Student concerning tayled landes.

The xxviij. Chapter.

G. i.

It

The xxviij. Chapter.

If a tenaunt in tayle suffer a recovery against him of the lāds entailed, to the entent y^e the recouerer shall stand seised thereof to the vse of a certain womā whō he entendeth to take to hys wyfe, for terme of life, & after to the vse of the first taile, and after he marieth the same womā, whether stādeth that recovery with cōscience, though other recoveries bypon bargaynes and sales did not :

D. It seemeth yes, for though the statute be y^e they to whom the tenemēts be so geuen, should not haue power to alien, but y^e the landes after their death should remaine to their issues, or reuert to the donors, if the issues failed: yet if he to whom the landes were so geuen take a wyfe, & dieth seised without heire of his body, & the donour enter, the womā shall recouer against him the third part to hold in the name of her dowry for terme of her life, though y^e taile bee determined, & the same law is of tenant by the curtesy: y^e is to say, of him that happeneth to mary one y^e is an inheritrix of the land entailed, & they haue issue, the wyfe dieth, and the issue dieth, he shall holde the landes for terme of his life, as tenaunt by the curtesy, notwithstanding the words of the statute, which say that after the death of the tenaunt in taile without issue, the landes shall reuert to the donour, and I thinke the cause is because the intent of that statute shall not be taken, y^e it intended to put asway such titles as the law should geue, by reason of the tayle, and so it seemeth that a like entent of the statute shalbee taken for ioyntoures, for els the statute might

*I woman
shall recover
the 3. part*

*not for woman
by curtesy*

might be sometime a lettig of matrimony, and it is not like that þ statute intended so, & therfore it seemeth that by the only deede of the tenaunt in taile, a iointour may be made by the intent of the statute, though þ words of þ statute scrue not expresse for it, for many times the intent of the letter shalbe taken, & not þ bare letter, as it appereth in the same statute, where it is saide þ he to whom the lāds be geue that haue no power to alien, yet the same statute is cōstrued that neither he nor his heires of his body shal haue no power to alien, & some thiketh þ such an intent shalbe taken here for sauing of ioyntours.

S. Truth it is, þ sometime þ intent of a statute shalbe taken farther then þ expresse letter stretcheth, but yet there may no intēt be takē against the expresse words of þ statute, for that shoulde be rather an interpretation of the statute thē an exposition, and it cannot be reasonably takē, but that the intent of the makers of the said statute was, that the land should remain cōtinually in the heires of the tail as long as the taile endureth, & there can no ioyntour be made neither by deede nor by recovery, but þ the tail must there by bee discontinued, and therfore this case of iointour is not like to the said cases of tenāt in dower, or tenāt by þ curtesy, for þ title of dower, and of tenancy by the curtesy groweth most specially by the continuance of the possession in the heires of the taile, but it is not so of ioyntours, and therfore by the only deede of the tenaunt in the taile, there may no ioyntour be lawfully made against the expresse wordes

by deed
a ioyntour
may be made

he nor his
for

The xxix. Chapter.

*Fornture
be tenant
in fee
war of
recovery.* **of** statute. And if there bee any made by way
of recovery, then it seemeth that it must bee put
vnder the same rule, as other recoveries must
be of lands entayled.

¶ The third question of the Student concern-
ing tayled lande.

The xxix. Chapter.

IF John atROKE being seised of lands in fee,
of his mere motion make a feoffment of cer-
taine lands to thintent y^e the fessees shall there-
of make a gift to y^e saide John atROKE to haue
to him and to his heires of his body, and they
make the gift according. And after the said Jo.
atROKE falleth into det, wherefore he is taken
and put in prison, and thereupon for paiment of
his debts, he selleth the same lād, & for suerty of
the buier he suffreth a recovery to be had agais-
t him in such maner as before appereth, whether
standeth that recovery with conscience or not?

*Body of
debt.*

D. I would here make a litle digressiō to aske
thee another question or y^e I make answeare to
thine: that is to say: to feelethy minde how that
law by the which the body of the debtor shalbe
taken and cast into prison there to remain til he
haue paide the debt, may stand with conscience,
specially if hee haue nothing to pay it with, for
as it seemeth if hee will relinquish hys goods,
which in some lawes is called in Latin Cedere
bonis, that he shal not be imprisoned, and that is
to be vnderstand most specially if he be fallē into
pouerty

pouerty and not through his owne default.

S. There is no law in this realme that the defendant may in any case Cedere bonis, and as mee seemeth if there were such a law, it shoulde not be indifferent, for as to the knowledge of him that the money is owing to, y^e debtour might Cedere bonis, that is to say, relinquish his goods, and yet retaine to himselfe secretly great riches. And therefore that law in such case seemeth more indifferent and righteous that committeth such a debtour to y^e conscience of y^e plaintiffe to whom the money is owing, then the committing him to the conscience of him that is the debtour, for in the debtour, some default may be assigned, but in him to whom the money is owing may be assigned no default. D. But if he to whom the debt is owing knoweth that the debtour hath nothing to pay the debt with, & that he is fallen into the pouerty by some casualty, and not thorough his owne default, doth the lawe of England hold, that hee may with good conscience keepe the debtour still in prison till he be payde? S. Nay verely, but it thinketh more reasonable to appoint the liberty and the iudgement of conscience in y^e case to the debted then to the debtor, for the cause before rehearsed. And then the debtour, if he know the truth, is (as thou hast said) bound in conscience to let him goe at liberty though hee be not compellable thereto by the lawe. And therefore admitting it for this time, that the law of Englande in this point is good and iust, I pray thee that thou wylt make aunswere to my question.

G. 14.

D.

not to be
by law

The xxix. Chapiter.

D. I will with good will, & therfore as me seemeth, forasmuch as it appeareth that y^e said gift was made of the mere liberty & freewill of the said John at Moke, & wout any recompence, that therfore it cannot be otherwise taken, but that y^e intet of y^e said John at Moke, as well at y^e tyme of the said feoffment, as at the time y^e hee receiued againe the said gyft in the taile, was, that if hee happened afterwarde to fall into pouerty, that he might alien the said land to relieue him wth, for how may it be thought that a man wil so much wthder the wealth of his heire, that he wil forget himselfe, & so it seemeth that not only y^e said recovery standeth wth conscience, but also if hee had made only a feoffment of the lād, the feoffment should be in conscience a good barre of the taile, but if the said feoffment & gifte had bene made in consideration of any recompence of money or for any matrimony or such other, then the feoffment of the said John at Moke should not binde his heire, & if he the suffered any recovery therof the recovery should be of like effect as other recoveries whereof we have treated before, & y^e which I said it was good to fauour rather for their multitude then for the conscience: & the law is that if the sonne & the heire of the sayde John at Moke in case that the sayd gifte was made without recompence, alien the lande for pouerty after the death of hys father, the recovery byndeth not but as other recoveries doe, for it cannot be thought that the intent of the father was, that any of hys heires in taile shoulde for any necessity dysheryte all other heires

heires in taile y^e shoulde come after him, but for himself me thinketh it is reasonable to iudge in such maner as I haue said before.

S. And though the intent of the said Iohn at Hoke when hee made the saide feoffement, and when he toke againe the said gift in taile, were that if hee fell in neede y^e he might alien: yet I suppose y^e hee may not alien though percase for the more suerty he declared his entet to be such vpon the liuerie of season: for that intent was contrary to the gift y^e he freely tooke vpon him, and when any intent or condition is declared or reserved against the state y^e any man maketh or excepteth: then such an intet or condition is void by y^e laswe, as by a case that hereafter followeth wil appeare, y^e is to say. If a man make a feoffement in fee, vpon condition that the feoffee shall not alien it to any man, that condition is void for it is incident to euery state of the fee simple that he that is so seysed may alien. And like as in a fee simple there is incident a power to alien, so in a state taile there is a secret intent vnderstand in the gift, that no alienation shalbe made. And therefore though y^e entent of the said Iohn at Hoke were y^e if he fel into pouerty that hee might sel: and though hee at the taking of the gift openly declared hys intent to be so: yet the intent should be void by y^e laswe as me seemeth, and if it be void by the laswe, it is also void in conscience, and so the said recovery must bee taken in this case to be of the same effect, as recoveries of other lads intailed be, & in none other manner.

note

not alien

Condition void

not alien

note

The xxx. Chapiter.

¶ The fourth question of the student concerning recoveries of inheritance entayled.

¶ The xxx. Chapter.

Note
IF an annuity be graunted to a man to haue & to perceiue to the graunter, & to the heires of his body of the cofers of his grauntour. And after y^e graunter suffreth a recovery against him in a writ of entre, by the name of a rent in dale of like summe as the annuity is of, with vouchers and iudgement after the common course, & both parties intend that the annuity shall bee recovered: whether shal the recovery binde the heire in the tayle of his annuity.

ID. What if it were a rent going out of lande? What effect should the recovery be then? **S.** It should be then of like effect as if it were of lād.

D. And so it seemeth to bee of this annuity, for as mee thinketh, a rent, and annuity bee of one effect, for the one of them shalbee payed in ready money as the other shall. **S.** That is truth, and yet there be many great dyuersities betwixt thē in y^e law. **D.** I pray thee shew mee some of those diuersities. **S.** part I shall shew thee, but I wote not whether I can shewe thee al, but first thou shalt vnderstand that one diuersity is this. Every rent be it rent seruice, rēt charge, or rēt secke, is going out of lād, but an annuity goeth not out of any land, but chargeth onely the person, that is to say, the grauntour, or his heires that haue assets by discent,

Diversity
Note

or

or the house if it be graunted by a house of religion to perceiue of their cofers. Also of an annuity there lyeth no action, but onely a writ of annuity agaynst the grauntour, his heires, or successours, & that writ of annuity lieth neuer agaynst the perneur, but only agaynst the grauntour or his heires, but of a rent, the same actiōs may lye, as doe of lande as the case requireth, & it lieth sometime of rent agaynst the tenant of ground, and sometime agaynst the perneur of the rent, that is to say, agaynst him that taketh the rent wrongfully, & sometime agaynst neither: as of a rent service, assise may lie for y^e lord against the mesne & y^e disseisour, or sometime agaynst the mesne only, if he did also y^e disseisō. Also an annuity is neuer taken for an assets because it is no freehold in y^e law, ne it shal not be put in execution vpon a statute merchant, statute staple, ne elegit as a rent may. And because the sayd writ of entre lay not in this case of this annuity, and that it cannot be entended in the law to be the same annuity, though it be of like summe with the annuity, ne though the parties assētēd & ment to haue y^e same annuity recovered by the said writ of entre, therefore the said recovery is boyd in law & conscience, but if such a recovery be had of rent with a voucher ouer: then it shal bee taken to bee of like effect, as recoveries of landes bee in such maner as wee haue treated of before.

*annuitio
nota*

perneur

*writ of
rent
like effect*

¶ The fifth question of the student concerning tyled landes.

The

The xxxj. Chapter.

¶ The xxxj. Chapter.

If lands be geuen to a man and to his wife in the name of her iointour by þe father of þe husband, to haue and to hold to them & to the heirs of their two bodies begotten, & after they haue issue & the husbände dieth, and the wife alieneth the land, and against the statute of 11. H. 7. suffreth a recovery thereof to be had against her, to the vse of the buier, & after her sone & heire apparant that is heire to the taile releaseth to the recoverers by fine, & dieth hauinge a brother on liue, & aft the mother dieth, who hath right to the lande, the buier, or þe brother of him that released: D. What is thine opinion therin, I pray the shew me. S. It seemeth þe the buier hath right, for by the said statute made in þe 21. yeare of king H. vii. among other things it is enacted that if any woman which hath lands of þe gifte of her husband, or of the gift of any of þe auncesours of the husband suffer any recoverie thereof against her by couin, that then such recoverie shalbe voide, and that it shalbe lawfull to him þe should haue the land after the death of the woman to enter, and it to hold as in his first right, provided alway þe that statute shal not extende where he that should haue the lād after þe death of the woman is agreable to any such alienation or recovery, so that þe agreement be of record. And for asmuch as the heire in this case agreed to the said recovery by fine, which is one of the highest records in the lawe, it seemeth that the buier hath right against that heire that agreed
and

Note

xi of He: 7

and against all þ̄ shalbe heire of the taile, & that not only by the said recovery, but also by þ̄ said statute, whereby the said recoverie with assent of the heire is affirmed.

D. Though þ̄ buier in this case haue right during the life of the heire that released, yet neuertheles, after his death his heire as it seemeth may lawfully enter, for the agreement whereof þ̄ statute speaketh, must as I suppose either bee had before the recovery, or els at the time of the recovery, for if a title by reason of þ̄ said statute be once deuolute to the heire in the taile, then þ̄ right as it semeth cannot be extinct nor put away by the only fine of the heire, no more then if he had died & the next heire to him had released to the buier by fine, in which case the release could not extinct þ̄ right of the title, nor the righte of entre þ̄ is geuen by the statute, & so as mee seemeth, his next heire may therefore enter.

S. As I perceiue all thy doubt is in this case because the assent of the heire was after þ̄ recovery, for if it had bene at the time of the recovery, as if the heire had bene bouched to warrant in the same recovery & he had entred, and thereupon the iudgemēt had bene geuen, thou agreeest wel, that recovery shoulde haue auoided þ̄ taile for ever.

Doctor. That is true, for it is in expresse wordes of the statute, but when the assent is after the recovery, then me thinketh it is not so, ne that the right of the firste taile, which was reuyued by the sayde statute, shall not bee extinct by his fine, no more then it shall in other

recovery affirmed

Devolution

entre l'arriere

in for recovery of the said land

The xxxj. Chapter.

other taile. S. I will be aduised vpon thy opinion in this matter, but yet one thing would I moue farther vpon this statute, & that is this: Some say, that by this statute al other recoveries that haue bene had ouer beside these recoveries of iointours be affirmed, for they say that sith the pliamēt at the makinge of thys statute knewe wel y many other recoveries were then vbled & had, to defeat tailes, & that it was like y they would so continue, which neuertheles the pliamēt did not prohibite for the tyme to come as it did the said recovery of ioyntours: that it is therefore to suppose that they thought that they should stand with law and conscience: but because iointours were made rather for y sauyng of the inheritance of the husband, thē to destroy the inheritance, they say that the Parliament thought & iudged the alienations and recoveries of such iointours to be against the lawes & conscience, & not the alienations of other lands entailed, for if they had they say that y pliamēt would haue auoyded recoveries of tyled lands generally as wel as it did of recoveries of iointours. D. As to that opinion I will answere thee thus for this time, that though that the makers of the said estatute onely put away recoveries of iointours, and not other recoveries, that yet it cānot be taken therfore that their intēt was that the other recoveries should stande good & perfect, for they spake thē onely of iointours because there was no complaint made in the parliamēt at that time, but against recoveries had of iointours, & therefore it semeth that they

*relictiō of iointours
against land
& ioyntours*

they intended nothing concerning other recoveries, but that they should be of the same effect as they were before, & no otherwise. And that wil appeare moze plainely this, though the makers of the saide statute intended to put asway & ad= nyl such recoveries as should be made of ioyntours after a certaine day limited in y^e statute, that yet they intended not to auoyde ne affirme such recoveries of iointours as were passed before y^e time: and if they intended not to auoyde ne affirme y^e recoveries had of ioyntours before that time, then how can it be take y^e they intended to put asway, or affirme other recoveries y^e were passed before that time, & not of iointours that would not affirme, ne put asway recoveries passed of iointours before that time. And so as it seemeth, they intended to spare the multitude of them that were passed of both, and not to comfort any to take them after that time. S. I am content thy opinion stand for this time, & I wil aske thee another question.

Note

¶ The first question of the Student concerning tyled landes.

The xxxij. Chapter.

If tenant in taile be disseised, and die, & an au= cester collateral to y^e heire in taile release with a warranty, and dye, and the warranty discedeth vpon the heire in the taile, whether is hee there

The xxxij. Chapter.

thereby barred in cōscience, as he is in the law.
D. Because your principall intent at this time
is to speake of recoveries & not of warranties,
& also because it hath bene of long time takē for
a principal maxime of the law, that it should be
a barre to the heires as well y^e claime by a fee
simple, as by state taile, & for that also y^e it was
not put away by the said statute of westm. the
second which ordeined the taile, I will not at
this time make thee an answer therein, but
will take a respite to be advised.

S. The I pray thee yet or we depart shew mee
what was the most principall cause that moued
thee to moue this question of recoveries had of
tailed lāds. **D.** this moued mee thereto, I haue
perceiued many times y^e there bee many diuers
opiniōs of those recoveries, whether they stād
with cōscience or not, & that it is to doubt that
many p^{er}sons run into offence of cōscience therby.
And therefore I thought to feele thy minde in
them, whether I could perceiue y^e it were clere,
y^e they serued to breake the taile in law and cō-
science, or that it were clerely against cōscience
so to breake the taile, or that it were a matter in
doubt, & if it appeared a matter in doubt, or that
it appeared that the matter were vsed clearely
against conscience, then I thought to doe some-
what to make the matter appeare as it is, to the
intent that they y^e haue the rule & the charge o-
uer the people as well, the spirituall menne as
tempozal men, should the rather endeuour them
to see it reformed for the common wealth of
the people, as well in body as in soule. For
when

Note

When any thing is vsed to y^e displeasure of god
 it hurteth not only the body, but also the soule.
 And temporal rulers haue not only cure of the
 bodie, but also of y^e soules, & shal aūssweare for
 them if they perish in their default: & because it
 seemeth by the more apparāt reason y^e the taylor
 be not brokē, ne fully auoided by y^e said recou-
 ries, & that yet neuertheles the great multitude
 of them that be passed is right much to bee pon-
 dered. Therefore it were very good to prohibite
 them for time to come, to put away such ambi-
 guities & doubts as rise now by occasion of the
 said recoveries, & so they be put as snares to de-
 ceive the people, and so will they be as longe as
 they be suffred to cōtinue. And me thinketh be-
 rely y^e it were therfore right expedient that tai-
 led lands should from henceforth either be made
 so strōg in y^e laswe y^e the tail should not be brokē
 by recovery, fine with proclamation, collateral
 warranty, nor otherwise: or els that all taylor
 should be made fee simple, so that euery mā that
 list to sel his land, might sel it by his bare fesse-
 ment and without any scruple or grudge of cō-
 science: and thē there should not be so great ex-
 pences in the law, nor so great variance among
 the people: ne yet so great offence of consciēce as
 there is now in many persons. S. Merely mee
 thinketh that thy opinion is right good & cha-
 ritabl^e in this behalf. And that y^e rulers be bound
 in cōscience to loke wel vpon it, to see it reformed
 & brought into good order. And verely by that
 thou hast said therein thou hast brought me into
 remembraunce that there bee diuers like snares
 con=

*Snares to
deceive*

Note

The xxxij. Chapter.

Prohibition

cōcerning spiritual matters suffered amonge the people wherby I doubt that many spiritual rulers be in great offēce against god. As it is of point that y spiritual men haue spoken so much of, that priests should not be put to answer before lay men, specially of felonies & murders, of y statute of xlv. E 3. y 3. chap. where it is said y a prohibitiō shal lie where a mā is sued in the spiritual court for tith of wood, y is aboue page of xx. pere, by y name of Silua cedua as it hath don before, & they haue in open Sermons, & in diuers other opē cōmunicatiōs & cōsailes caused it to be openly notified & knowen, y they should be al accursed that put priests to answer, or maintaine y said estatute, or any other like to it. And after when they haue right wel perceiued that notwithstanding al that they haue don therin, it hath ben vled in y same points thzough al the realme in like manner as it was before: When they haue set stil & let y matter passe, & so when they haue brought many persons in great danger, but most specially thē y haue geuen credēce to their saying, & yet by reason of the olde custome haue don as they did before, thē there they left thē, but verely it is to feare that there is to thēselues right great offence therby, y is for to say to see so many in so great daunger as they say they be. And to doe no more to bring them out of it then they haue done for it, if it be true as they say, they ought to sticke to it woth effecte in all charity, till it were reformed. And if it be not as they say then they haue caused many to offende that haue geuen credēce

note

to them, and yet contrary to their owne cōsciēce do as they did before, & that percase should not haue offēded if such sayings had not ben. And so it seemeth y they haue in these matters done either too much, or too little.

And I beseech almighty God that some good mā may so call vpon al these matters that wee haue now comuned of, so that they that be in authoritie may some what ponder the, & to order them in such maner that offēce of conscience grow not so lightly therby hereafter as it hath done in tynes past. And verely hee that on the crosse knew the price of mans soule, will hereafter aske a right straight accompt of rulers for euery soule that is vnder them, and that shall perish thzough their default.

nota

¶ Addition.

Thus haue I shewed vnto thee in this little Dialogue how the law of Englad is grounded vpon the law of reason, the law of GOD, the general customes of the realme, and vpon certein principles that be called maximes, vpo the particuler customes vsed in diuers Cities and countries, & vpon statutes which haue ben made in diuers parliaments by our soueraigne Lord the king & his progenitours, and by the Lordes spiritual and tempozal and al the commons of y realme. And I haue also shewed thee in the ix. Cha. of this booke, vnder what maner the said general customes and maximes of the lawe may be proued and affirmed if they were

H. j.

denyed

The xxxij. Chapter.

denied, and diuers other things be contained in
this present Dialogue, which wil appeare in y
table, that is in the latter ende of the booke, as
to the readers wil appeare. And in the ende of
the said dialogue, I haue at thy desire shewed
thee my conceipt cocerning recoueries of tailed
lands & thou hast vpo the laid recoueries shew
ed me thine opinion. And I besech our lord set
them shortly in a good cleare way, for surely it
wil be right expedyent for the well ordering of
conscience in many persons, that they be so.

And thus the God of peace & loue
be alway with vs.

Amen.



Ere endeth the first Dialogue in English, to new additiōs betwixt a Doctour of diuinity, & a Student in the lawes of Englad. And hereafter follosweth the second.

In the beginning of which Dialogue y^e Doctour aunswereth to certayne questions, which the Student made to y^e Doctour before y^e making of this Dialogue, concerning the lawes of England and conscience, as appeareth in a Dialogue made betwene them in Latin the xxiiij. Chapter. And he aunswereth also to diuers other questions that the Student maketh to him in this Dialogue, of the law of Englande and conscience. And in diuers other Chapters of this present Dialogue is touched shortly, howe the lawe of England are to be obserued & kept in this realme, as to temporal thinges, aswell in lawes as in conscience, before any other lawes. And in some of y^e Chapters therof, is also touched that spiritual Iudges in diuers cases be bound to geue their iudgementes according to the kinges lawe. And in the latter ende of the booke the doctour moueth diuers cases concerning the lawes of Englad, wherin he doubteth howe they may stand with conscience, wherunto the student maketh answer in such maner as to the reader wil appeare.

The Introduction.

In the latter end of our first Dialogue in latine, I put diuers cases grounded vppon the lawes of Englande wherein I doubted & yet do, what is to be holdē therein in conscience. But for as much as y^e tyme was then farre past, I shewed thee that I woulde not desire thee to make aunswere to them forthwith at y^e tyme but at sōe better leisure wherunto thou saiest thou wouldest not onely shew thine opinion in y^e cases, but also in such other cases as I would put: Wherefore I pray thee now (forasmuch as me thinketh thou hast good leisure) y^e thou wilt shew me thine opiniō therein. D. I wil wth good wil accōplishe thy desire: but I would that when I am in doubt what the law of this realme is in such cases as thou shalt put, y^e thou wilt shew me what y^e lawe is therein, for though I haue by occasiō of our first dialogue in latin learned many thigs of y^e lawes of this realme which I knew not before, yet nevertheless there be many mo things that I am yet ignorāt in, & that paraduētūre in these selfe cases that thou hast put & entendest herafter to put: as I said in the first Dialogue in latin y^e xx. Cha. to search cōscience vpon any case of the law it is in bayne, but where the lawe in the same case is perfectly knowen. S. I. wil with good wil do as thou saiest, & I entēd to put diuers of the same questions, y^e be in the last cha. of the said dialogue in latin, & sōetime I entēd to alter some of them, and adde some new questions to them, as I shalbe most in doubt of.

D.

D. I pray thee doe as thou faiest & I shal wth good will either make aunswere to them forth with as wel as I can, or shal make longer respite to be aduised, or els parauenture agree to thine opinion therein, as I shal see cause. But first I would gladly knowe y^e cause why thou hast begon this Dialogue in y^e English tōgue, & not in the latin tongue, as the first cases that thou desirest to knowe mine opinion be in, or in frenche as the substance of the lawe is. S. The cause is this. It is right necessary to all men in this realme, both spiritual & tempozall for the good ordering of their cōsciēce, to know many thinges of the lawe of Englād that they be ignoraunt in. And though it had bene more pleasāt to thē y^e be learned in y^e latin tōgue to haue had in latine rather then in English: yet neuertheles for asmuch as many cā read English that vnderstād no latin, & some that cannot read English: by hearing it read may learne diuers thinges by it that they shoulde not haue learned if it were in latin: Therefore for y^e profite of y^e multitude it is put into the Englishe tōgue rather thē into the latin or frēch tōgue. For if it had bene in french, fewe shoulde haue vnderstād it, but they that be learned in y^e law, & they haue least neede of it, forasmuch as they know the law in the same cases wthout it, & can better declare what conscience wil thereupon thē they that know not the law nothing at al. To them therefore that bee not learned in the law of y^e realme this treatise is specially made for thou knowest wel by such studies thou hast

B. iij.

taken

The first Chapter.

taken to some knowledge of the law of the realm that is to them most expedient. D. It is true y^e thou saiest & therefore I pray thee now proceede to thy questions.

¶ The first question of the Student.

¶ The first Chapter.

not punishable
Note
punishable
Nota
I f^r tenant in taile after possibilitie of issue extinct, do wast, whether doth he therby offend in conscience though hee bee not punishable of wast by the law. D. As y^e law cleer y^e he is not punishable for y^e wast: S. Ye verely. D. And what is the law of tenants for terme of life, or for terme of yerres if they do wast: S. They be punishabbe of wast by the statutes, & shal yeld treble damages, but at the comō law befoze the statut they were not punishable. D. But whether thinkest thou y^e befoze the stat they might haue done wast in cōscience, because they were not punishable by the law: S. I think not for as I take it, y^e doing of the wast of such particular tenāts for terme of life, for terme of yerres or of tenants in dower, or by the curtesie: is prohibited by the law of reaso, for it semeth of reaso that whē such leases be made, or y^e such titles in dower or by the curtesie be geue by the law, that there is onely geuen vnto thē the annuall profits of the lande and not the houses and trees, and the gravel to digge and carry away, wherby y^e whole profit of them in the reuerſio should

should be taken away for ever. And therefore at the comō law for wast done by tenāt in doswer or tenant by the curtesie, there was punishmēt ordained by the lawe by a prohibition of wast, wherby they should haue yelded damages to p̄ value of the wast. But against tenaunt for tme of life or for terme of yeres lay no such prohibi- tid for there was no maxime in the law therin against thē, as there was against p̄ other. And I thinke p̄ cause was forasmuch as it was iud- ged a folly in the lessour p̄ made such a lease for terme of life or for tme of yeres, p̄ at that time of p̄ lease he did not prohibite thē they shoulde not do wast, & sith he did not prouide no reme- dy for himselfe, the law would none prouide. But yet I thinke not that the entēt of the law was that they might lawfully & with good cō- science doe wast, but against tenants in doswer & by the curtesie the law prouided remedye for they had their title by the law.

*so they in les-
sors*

And verely me thinketh that this tenaunt in taile as to doing of wast, should be like to a te- nant for terme of life, for he shal haue the lande no lenger then for terme of his life, no moze thē a tenaunt for terme of life shal, and the wast of this tenaunt is as great hurt to him in the re- uersion or the remainder, as is the wast of a te- nant for terme of lyfe, and if hee alpen, the donour shal enter for the forfeiture, as he shal bpon the alienation of a tenāt for terme of life, and if hee make default in a Præcipe quod red- dat the donour shalbe receyued as hee shall bee bpon the default of a tenaunt for terme of lyfe,

*donor
enter*

The seconde booke.

& therfore me thinketh he shal also be punisha-
ble of wast, as tenant for terme of life shal. S.
If he alien, the donour shal enter as thou saist
because the alienation is to his disheritance, &
therefore it is a forfeiture of his estate: & y^e is
by an auncient Maxime of the lawe y^e geueth
that forfeiture in y^e selfe case, & if he make de-
fault in a Pf & redd^e, he in the reuersion, as thou
saist shalbe receiued; but that is by y^e statute
of Westm^r 2. for at the commō lawe there was
no such rescit, & as for the statute y^e geueth the
action of wast againste a tenant for terme of
life and for terme of yerres, it is a statute penall
& shal not be taken by equitie, & so there is no
remedy geuen against him, neither by common
law nor by statute, as there is against tenat for
terme of life, & therefore he is unpunishable of
wast by y^e law. D. And though he be unpunish-
able of wast by the lawe: yet neuerthelesse mee
thinketh he may not by conscience do that, that
shalbe hurtfull to the inheritaunce after hys
tyme, sith hee hath the lande but for terme of
his life, no more then a tenant for terme of life
maye, for then hee shoulde doe as hee woulde
not be done vnto, for thou agreest thy selfe that
though a tenant for terme of life was not pu-
nishable of wast before the statute, that yet the
lawe iudged not that hee might rightfully and
with good conscience doe wast. And therefore
at this day if a feoffement be made to the vse of
a man for terme of life, though there lie no ac-
tion against him for wast, yet he offendeth in cō-
science if he doe wast, as the tenant for terme
of

note

statute
penall

note

of life did afore the statute, whē no remedy lay
 against him by the lawe. **S.** That is trespere,
 but there is great diuersity betwene this tenāt
 and a tenant for terme of life; for thys ternaunt
 hath good authorizty by þe donour to do wast,
 and so hath not the ternaunt for terme of life, as
 it is said before. For the estate of a ternaunt in
 taile after possibility of issue extinct, is in thys
 maner, when landes be geuen to a man and to
 his wife, & to the heires of their two bodies be
 gotten, & after the one of them dieth wythout
 heires of their bodies begotten, then he or she
 that ouerliueth is called tenāt in taile aft possi-
 bilitie of issue extinct, because ther cā neuer be
 no possibility by any heire that may eherite by
 force of the gift. And thus it appereth that the
 donees at þe time of the gift, receiued of þe donor
 estate of inheritāce, which by possibility might
 haue continued for euer, wherby they had power
 to cut downe Trees and to do al thing that is
 wast, as ternaunt in fee simple might, and that
 authorizty was as strong in the lawe, as if the
 lessour that maketh a lease for terme of life, say
 by expresse wordes in the lease, þe lessee shal
 not be punishable of wast. And therefore if the
 donour in this case had graunted to the donees
 that they shoulde not be punishable of wast, þe
 graunt had bene void, because it was excluded
 in the gift before, as it shoulde be vpon a gift in
 fee simple: & so for asmuch as by þe first gift & by
 þe livery of seison made vpon the same, þe donees
 had authorizty by the donor to do wast: Ther-
 fore though þe one of those donees be now dead
 wyth

The first Chapter.

Without issue, so that it is certain that after þ
 death of the other, the land shall reuerte to the
 donour: yet the authoritie that they had by the
 donour to do wast, continueth as long as þ gift
 & the liuery of season made vpon the same conti-
 nueth: & I take this to bee the reason why hee
 shal not haue in aide as tenant for terme of life
 shal, that is to say, for that he cannot aske help
 of that maxime, wherby it is ordeined that a te-
 nant for terme of life shal haue in aid, for he can-
 not say but that he toke a greater estate by þ li-
 uery of season þ was made to him, which yet
 continueth, hen for terme of life, & so I thinke
 him not bound to make any restitution to him in
 the reuerſion in this case, for þ wast. D. Is thy
 mind only to proue þ this tenant is not bound to
 make restitution to him in the reuerſion for the
 wast? or that thou thinkest that he may wyth
 clere conscience doe al maner of wast? S. I. in-
 tend to proue no moze but þ he is not bound to
 restitution to him in the reuerſion. D. Then I
 wil right wel agree to thine opiniõ for þ reason
 that thou hast made, but if thy mind had ben to
 haue proued þ he might w clere conscience haue
 done al maner of wast, I would haue thought
 the contrary therto, & that the tenant in fee ſim-
 ple may not do al manner of wast and destructi-
 on with conscience, as to pul downe houses and
 make pastures of Cities and towneſ, or to do
 ſuch other actes which bee agaynst the com-
 mon wealthe. And therefore ſome wyll ſaye
 that tenaunt in fee ſimple maye not wyth
 conscience deſtroy his woods and coale pyttes
 whereby

*Cannot afford
 possibility
 not puniſh-
 able*

Whereby a whole countrey for their money haue had fuel, and yet though he do so he is not bound by conscience to make restitution to no person in certain. But now I pray thee ere thou proceed to the second case, if thou wilt somewhat shew me what thou meanest when thou saiest: at the common law it was thus or thus? I vnderstand not fully what thou meanest by that terme, at the common law. S. I shal w good wil shewe thee what I meane thereby.

What is met by this terme when it is sayd thus it was at the common lawe.

The ij. Chapter.

The common lawe is taken three manner of waies. First it is taken as the lawe of this realme of Englande disseuered from all other lawes, and vnder this maner taken. It is oftentimes argued in the lawes of Englande what matters ought of right to be determined by the common law, & what by the Admirals court, or by the spirituall court, & also if an obligatio beare date out of the realme as in Spaine, Fraunce, or such other. It is said in the law & trouth it is, if they be not pleadable at the common law. Secondly the common law is taken as the kinges courts of his benche, or of the common place, & it is so taken when a plee is remoued out of auncient demeane for that the land is franke fee & pleadable at the common law, that is to say in the kinges court & not in auncient demesne.

And

The seconde Booke

And vnder this maner taken, it is oftentimes pleaded also in base courts, as in courtes Barons, the county and the court of Pyponders, & such other, this matter or that &c. ought not to be determined in that court but at the common law, & is to say in the kinges courts &c.

Thirde by the common law is vnderstand such thinges as were law beefore any statute made in that point & is in question: so & that poynt was holden for law by the generall or particular customes and Maximes of the Realme or by the law of reason & the law of god: no other law added to them by statute nor otherwise, as is the case beefore rehearsed in & first chapiter, where it is said that at the common law tenat by the curtesy and tenat in dower were punishable of wast, & is to say, & beefore any statute of wast made, they were punishable of wast by & ground and maximes of & lawe vled beefore the statute made in that point, but tenant for terme of life ne for terme of yeares were not punishable by the layde groundes and Maximes til by the statute, remedy was geuen against them: and therefore it is said that at the common lawe they were not punishable of wast. D. I. pray thee now proceede vnto the seconde question.

The second question of the Student.

The iij. Chapiter.

36

tenants by
curtesy & dower
in dower
punishable
beefore any
statute

Nota

The thirde Chapter. 63

I f a mā be outlawed & neuer had knowledg
of the suit, whether may the king take al his
goods, and retaine them in conscience as he may
by the law. D. What is the reason why they be
forfaited by the law in that case. S. The very
reason for that it is an olde custome and an old
Maxime in the law, that hee that is outlawed
shal forfeit his goods to the king, and the cause
why that Maxime began was this, whē a mā
had dōe a trespass to an other, or an other offence
wherefore processe of vtlagary lay, and he that
the offence was done to, had taken an action a-
gainst him according to the lawe, if he had ab-
sented himselfe and had no landes, there had
beene no remedye agaynstc hym; for after the
lawe of Englande, no man shalbe condemned
without aunswere, or that he appeare and will
not aunswere, except it be by reason of any sta-
tute. Therefore for the punishment of such of-
fendours as wil not appeare to make aunswere
and to be iustified in the kinges Court it hath
beene vsed without time of minde that an at-
tachement in that case shoulde be directed a-
gainst him retournable in the kinges bench or
the common place, and if it were retourned
thereupon that hee had nought where by hee
might be attached, that then should goe for the
a Capias to take hys personne, and after an
alias Capias, and then a Pluries, & if it were
retourned vppon euery of the said Capias that
he coude not be founde and hee appeared not,
then should an exigent be directed against him,
which should haue so longe a day of retourne,
that

*arrested to
said p^{er} p^{er}son
outlawed*

The third Chapter.

*note for con-
sumation.*

that five countie might be holden befoze þe re-
turne therof and in euery of the said five coun-
ties; the defendand to be solempnely called, & if
he appeare not, the for his cōtumacy & disobe-
dience of the lawe, the coroners to geue iudge-
ment that he shalbe outlawed, wherby hee shal
forfeit his goods to the king and leese diuers o-
ther aduantages in the lawe þe needeth not here
to be remembred now. And so because he swa-
re in this case called according to the lawe & appe-
red not, it semeth that the king hath good title
to the goods both in lawe and conscience.

D. If he had knowledg of the suit in very
deede, it semeth the king hath good title in cōsci-
ence as thou saist, But if he had no knowledg
therof: it semeth not so, for þe default that is ad-
iudged in him (as appeareth by thine own rea-
son) in his cōtumacy & disobedience of the lawe,
and if he were ignoraunt of the suite, then can
there be assigned to him no disobedience for a dis-
obedience implieth a knowledg of þe he should
haue obeied vnto.

S. It semeth in this case that he should be cōpel-
led to take knowledg of the suit at his perill,
for sith he hath attempted to offend the lawe: it
seemeth reason that he shalbe compelled to take
hede what the lawe wil do against him for it, &
not only that: but that he should rather offer a-
mendes for his trespass then for to tary till he
were sued for it. And so it semeth the ignoraunt
of the suite is of his own default, specially sith
in the lawe is set such order that euery manne
may know if he wil, what suit is taken against
him,

The thirde Chapter. 64

him, & may see the records therof when he wil,
 & so it semeth y^e neither y^e party nor the lawe be
 not bounden to geue him no knowledge therein.
 And ouer this I would somewhat moue further
 in this matter thus. That though y^e actiō were
 vnttrue & y^e defendāt not guilty, y^e yet the goodes
 be forfeited to the king for his not apparāce in
 lawe, & also in consciēce, and that for this cause
 the king as soueraigne and head of the lawe, is
 bounden of iustice to graunt such writs & such
 processe as bee appointed in the lawe to euery
 person that wil cōplaine, be his surmise true or
 false, and thereupon the king (of iustice) osweth
 as wel to make processe to bring the defendānt
 to answer when he is not guilty, as when he
 is guilty, & then when there is a maxime in the
 lawe, that if a man be outlawed in such manner
 as before appeareth, that he shall forfeit al hys
 goodes to the kinge, and maketh no exception
 whether the action be true or vnttrue, it semeth
 that the said maxime more regardeth the gene-
 ral ministratiō of Justice, then the particuler
 right of the party, and therefore y^e property by
 the outlary & by the said maxime ordeined for
 ministratiō of iustice, is altered & is geue to the
 king as before appereth & y^e both in lawe & in cō-
 science, as wel as if the actiō were true. And the
 y^e party that is so outlawed is driue to sue for
 his remedy against him that hath so caused him
 to be outlawed vpon an vnttrue action. D.

If he haue not sufficient to make recompence
 or ope before recoverye can bee had, what re-
 medye is had then? S. I. thinke no remedye
 and

*note
 y^e defendānt
 not guilty is*

note

The second booke.

& for a further declaration in this case & in such other like cases where the property of goodes may be altered without assent of the owner, it is to consider that the property of goodes be not geuen to the owners directiue by the lawe of reason nor by the law of God, but by þe law of man, and is iustified by the law of reaso and by the law of god so to be. If or at þe beginning al goodes were in common, but after they were brought by the law of man into a certain property so that euery man might know his owne, & then when such property is geuen by the lawe of man, þe same lawe may assigne such conditi- ons vpon the property as it listeth, so they be not against the law of God ne the law of rea- so, and may lawfully take away that it geueth and appoint how long the property shal conti- nue. And one condition that goeth with euery property in this realme, is, if he þe hath the pro- perty be outlawed according to such processe as is ordeined by the lawe, that he shal forfeit the property vnto the king, and diuers other cases there be also, whereby property in goodes shal be altered in the lawe and the right in landes also without assent of the owner, wherof I shal shortly touch some without saying any autho- rity therein, for the more shortnes. First by a sale in open market þe property is altered. Also goods stolen and seised for the king, or sweyued be forfeit, vnles appel or inditement be sued. Also straies, if they be reclaimed & be not after claimed by the owner within the yere, be forfeit, & also a deodand is forfeit to who soeuer þe pro- per-

Nota

party was before (except it belöged to þe king) & shalbe disposed for the soule of him that was slaine therewith, and a fine with a nonclaime at the common lawe, was a barre, if clayme were not made within a yere, as it is now by statute if the claime be not made within v. yere. And al these forfaitures were ordeined by the law vpon certaine considerations which I omitte at this time, but certaine it is þe none of the were made vpon a better consideration then this forfaiture of vtlagary was. For if no especyall punishment should haue bene ordeyned for offenders þe would absent them selues & not appeare whē they were sued in the kings courts, many lutes in the kinges courtes should haue bene of little effect. And with this maxime was ordeined for the execution of Justice, & as much doe therein by the common lawe, as policie of man could reasonably deuise, to make the party haue knowledge of the suite, and nowwe is added thereto by the statute made þe sixte yere of king Henry the eight, that a writte of proclamation shalbe sued if the party be dwelling in an other shire: it seemeth that such title as is geue to the king thereby is good in conscience, especially seeing that the king is boundē to make processe vpon the surmise of the plaintife, and may not examine, but by plea of the party, whether the surmise be true or not. But if the party bee retourned five times called, where in deede he was neuer called (as in the seconde case of the last Chapter of the said dialogue in latin is contained) then it seemeth the party shal haue good re-

*find at y
common law
aband if
claind be
not made
in fine
y dard*

Nota

The iiij. Chapter.

medy by petition to the king, specially if he that made the retorne bee not sufficient to make recompence, or die before recovery can be had. D. Now sith I haue herd thine opiniō in this case wherby it appeareth that many things must be seene, or a full & a plaine declaratiō cā be made in this behalfe, & seing also y the plaine aunswere to this case, shal geue a great light to diuers other cases, that may come by such forfeiture: I pray thee geue me a farther respit, er y I shewe thee my ful opinion therin, and hereafter I shal right gladly doe it. And therefore I pray thee proceede now to some other case.

¶ The third question of the student.

¶ The iiij. Chapter.

If a strainger do waste in landes that an other holdeth for terme of life without assent of the ternaunt for terme of life: whether may he in the reuerſion recover treble damages, and the place wasted against the ternaunt for terme of life according to the statut, in cōscience, as he may by the law, if y strainger be not sufficient to make recompence for the wast done. D. Is the lawe clere in this case y he in the reuerſion shal recover against the ternaunt for terme of life though that he assented not to the doinge of waste: S. Ye verely, and yet if the tenant for terme of life had ben bounde in an obligatiō in a certaine sūme of money y he should do no waste: he should not forfeit his bond by the wast of a straunger, and the

the diuerſity is this. It hath beene uſed as an
 auncient maxime in þ law þ tenant by þ curteſy
 & tenant in dower ſhould take the lande in this
 charge, y is to ſay, that they ſhould do no waſte
 theſelues, nor ſuffer none to be done, & when an
 action of waſt was geue after againſt a tenants
 for terme of life, then was he taken to bee in the
 ſame caſe as to þ point of waſt as tenant by the
 curteſy, & tenant in dower was, that is to ſay,
 that he ſhould do no waſt, nor ſuffer none to be
 don, for there is an other maxime in the lawe of
 England, y al caſes like vnto other caſes ſhalbe
 iudged after the ſame lawe as other caſes bee, &
 ſith no reaſon of diuerſity can bee aſſigned why
 the tenaunt for terme of life after an action of
 waſt was geuen againſt him, ſhoulde haue any
 more fauour in the lawe then the tenant by the
 curteſy, or tenant in dower ſhould: therefore he
 is put vnder þ ſame maxime as they bee, y is to
 ſay, that he ſhal do no waſt, ne ſuffer none to be
 done, & ſo it ſemeth that þ law in this caſe doth
 not conſider the ability of the perſon that doth
 the waſt, whether he be able to make recōpence
 for the waſt or not. But the aſſent of the laide
 tenants, whereby they haue wilfully take vp
 on them y charge to ſee that no waſt ſhalbe doe.
 D. I haue heard that if houſes of theſe tenants
 be deſtroyed with ſodeine tepest, or with ſtrange
 enemies y they ſhal not be charged with waſte.
 S. Truth it is. D. And I thinke the reaſon is
 becauſe they can haue no recovery ouer. S. I
 take not y for the reaſon, but y it is an old rea-
 ſonable maxime in the lawe that they ſhoulde

For more
 waſt no
 ſuffer none
 to be done

More

The iiij. Chapter.

be discharged in those cases, how be it some will say y^e in those cases the law of reason doth discharge the, & therefore they say y^e if a statut were made, y^e they should be charged in those cases of wast, that y^e statut were against reason, & not to be obserued, but yet neuertheles I take it not so for they might refuse to take such estate if they would, & if they will take the state after the law made: it seemeth reasonable that they take it wth the charge & wth the condition that is appointed thereto by the law, though hurt might follow to them afterwarde thereby, for it is often times seene in y^e law y^e the lawe doth suffer him to haue hurt wthout help of y^e law, that will wthfully runne into it of his owne act not compelled thereto, & aduadgeth it his folly so to run in to it, for which folly he shal also be many times without remedy in conscience. As if a man take landes for terme of life, and bindeth himselfe by obligation that he shal leaue the land in as good case as he found it, if the houses be after blowe downe with tempest or destroyed with straunge enemies, as in the case y^e thou hast put before, he shalbe bound to repaire them or els he shal forfait his obligation in law & conscience, because it is his owne act to bind him to it, & yet y^e lawe would not haue bound him thereto as thou hast said before. So me thinketh that the cause why the said tenants be discharged in the law in an action of wast when the houses be destroyed by sodeine tēpest, or by strāge enemies, is by a special reasonable maxime in y^e law, wherby they be excepted frō y^e other general bond, before reher-

sed,

*note
no for the
act is fa-
lone and for
obligation*

sed, that is to say, they shall at their perill see y
 no wast shalbe done, & not by the law of reason
 and sith there is no maxime in this case to helpe
 this tenant, ne y he cannot be holpen by the law
 of reason, it seemeth y he shalbe charged in this
 case by his owne act both in law and conscience,
 whether the straunger be able to recōpence him
 or not. D. I doubt in this case whether y max-
 ime that thou speakest of be reasonable or not, y
 is to say, that tenants by the curtesie & tenants
 in doswer were bounden by the comon lawe, that
 they should doe no wast themselves, & ouer y at
 their peril to see that no wast should be done by
 none other. For that law seemeth not reasona-
 ble that bindeth a man to an impossibility. And
 it is impossible to preuent that no wast shalbe
 doe by straungers, for it may be sodenly done in
 the night, that the tenants can haue no notice of,
 or by great power that they be not able to resist,
 and therefore me thinketh they ought not to be
 charged in those cases for the wast, wout they
 may haue good remedy ouer, & the percale y said
 maxime were sufferabl, & els me thinketh it is a
 maxime against reason. S. As I haue said be-
 fore no man shalbe compelled to take the bonde
 vpon him, but he that wil take the land, & if hee
 wil take the land: it is reason he take y charge
 as the law hath appointed with it, & then if a-
 ny hurt grow to him thereby: it is through his
 owne act & his owne assent, for hee might haue
 refused the lease if hee woulde.

D. Though a man may refuse to take estate for
 terme of life, or for tme of yeres, & a woman may

The iiij. Chapter.

refuse to take her dower, yet tenant by the cur-
tesy cannot refuse to take his estate, for imme-
diately at the death of his wife, by possession ab-
deth in him by the act of the law without entre, &
then I put the case that after the death of his
wife, hee would waive the possession, and after
waste were doe by a stranger, whether thinkest
thou that he should answer to the waste. S.
I thinke he should by the law. D. And howe
standeth that with reason, seeing there is no de-
fault in him. S. It was his default, & at his
owne perill that hee would marry an inheretrix
whereupon such daunger might follow. D. I
put case that hee were within age at the mari-
age, or that the land descended to his wife after
he married her. S. There thou mouest a farther
doubt then the first question is, & though it were
as thou sayest, yet thou canst not say but that
there is as great default in him, as is in him in
the reuerſion, & that there is as great reason why
he should be charged with the waste, as that he
in the reuerſion should bee disinherited & haue no
maner remedy, ne yet no profit of the land as the
other hath, & though the laide maxime may bee
thought very straight to the laide tenants: yet
is it for to be fauoured as much as may bee rea-
sonably, because it helpeth much the comon welth:
for it hurteth the comon wealth greatly when
woods & houses be destroyed, & if they should an-
swer for no waste, but for waste doe by theselues,
there might be waste doe by strangers by coman-
dement, or assent in such colourable manner, that
they in the reuerſion should neuer haue proofe of
their

Note

their assent. D. I am content thine opinion stand
for this time, and I pray thee now proceede to
another question.

The fourth question of the student.

The v. Chapter.

If he that is the very heire be certified by the
ordinary bastard, and after bring an action as
heire against another person, whether may any
man knowing the truth be of counsaill to the te-
nant & pledeth the said certificat against y^e deman-
dant by conscience or not. D. Is the law in this
case y^e al other against whō the demandant hath
title shall take advantage of this certificate as
wel as he at whose suit he is certified bastard.
S. Ye verely, & y^e for two causes, wherof y^e one
is this. There is an olde maxime in the lawe, *Note*
a mischief shalbe rather suffered then an incon-
venience, & the in this case if another writ should
afterward be set to another Bishop in another
actiō, to certefy whether he were bastard or not
peradventure that Bishop would certifie that
he were mulier, that is to say, lawfully begottē,
and then hee should recover as heire, and so hee
should in one selfe court be taken as mulier, and
bastard, for avoyding of which contrariety, the
law wil suffer no moe writs to go forth in that
case, and suffreth also al men to take advantage
of y^e certificate, rather then to suffer such a con-
tradiction in y^e court, which in the law is called
an inconvenience, & the other cause is because this

J. iiij.

certi-

The v. Chapter.

certificate of þ Bishop, is the highest triall þ is
 in þ law in this behalfe, but this is not vnder-
 stand but where bastardy is layde in one that is
 party to the writ, for if bastardy be layde in one
 that is a stranger, to the writ, as if bouchee pray
 in aide or such other, then that bastardy shalbe
 tried by xij. men, by which trial he in whom the
 bastardy is laid, shal not be concluded, because he
 is not priuy to the trial, & may haue no attain-
 t, but he that is party to þ issue may haue attain-
 t, & therfore he shalbe concluded & none other but
 he, & for as much as the said maxime was orde-
 ned to eschewe an inconuenience (as before ap-
 peareth) it semeth that euery man learned, may
 with conscience plede the said certificate for a-
 voiding thereof, & geue counsaile therin to þ pty
 according vnto the law, for els the said incon-
 uenience must needes folloiw. But yet neuerthe-
 les I doe not meane thereby that the party may
 after whē hee hath barred the demandāt by the
 said certificate, retaine the land in conscience by
 reason of the said certificate, for though ther be
 no law to compel him to restore it, yet I thinke
 wel that in conscience he is bound to restore it, if
 he know that þ demandāt is þ very true heire:
 wherof I haue put diuers cases like in the xvij.
 chap. of our first dialogue in latin, but my intēt
 is that a mā learned in the law in this case & o-
 ther like, may w conscience geue his counsaile ac-
 cording to þ law, in auoiding of such things as
 þ law thik it should for a reasonabl cause be es-
 chewed. D. Though he þ doth not know whe-
 ther he be bastard or not, may geue his counsaile
 also

Note

bound
in conscience

also plede the said certificate: yet I thinke that he that doth know himselfe to be the very true heire may not plede it, & that is for two causes whereof the one is this.

Euery man is bound by the lawe of reason to doe as hee would be done to, but I thinke that if hee that pledeth that certificate were in like case, he would thinke that no mā knowing the said certificate to be vnttrue, might with conscience pleade it against him, wherefore no more may he pleade it against none other.

The other cause is this, although the certificate be pleded, yet is the tenat bounden in conscience to make restitution thereof, as thou haste said thy selfe, and the in case that he would not make restitution, then he that pleadeth the plee, should run thereby in like offence, for hee hath holpen to set the other man in such a liberty that hee may chose whether hee will restore the lande or not, and so hee shoulde put himselfe to jeopardy of another mans conscience. And it is written Ecclesiast. iii. *Quam periculum peribit in illo.* That is, hee that wilfully will put himselfe in jeopardy to offend, shall perish therein, & therefore it is the surest way to eschew perils, from him that knoweth that he is heire, not to pleade it, and as for the incommenience that thou saist must needes folloow, but the certificate bee pleaded: as to that it may be answered that it may be pleaded by some other y^e knoweth not if he is very heire, & if the case be so far put that there is none other learned there but hee, then we thinke that he shall rather suffer the saide
incon-

Nota.

The vj. Chapter.

incōuenience, then to hurt his owne cōscience, for alway charity beginneth at him selfe, & so euery mā ought to suffer al other offēces rather then he himselfe would offend. And nowe that thou knowest mine opinion in this case, I pray thee proceede to another question.

¶ The fifth question of the student.

¶ The vi. Chapter.

VVether may a man with conscience bee of cōsaile with the plaintife in an action at the cōmon law, knowing y^e the defendant hath sufficient matter in conscience whereby he may bee discharged by a Subpena in the Chaucerpe which he cannot pleade at the common lawe or not? D. I pray thee put a case thereof in certaine, for els the question very general.

S. I will put the same case that thou puttest in our first dialogue in latin, the i. chapter, that is to say, if a man bound in an obligation pay money, & taketh none acquittance, so that by the cōmon law he shalbe cōpelled to pay the money againe for such cōsideration, as appeareth in the xv. chap. of the said dialogue, where it is shewed evidently how the law in y^e case is made vpon a good reasonable ground, much necessary for al the people, howbeit, that a man may sometime through his owne default take hurt thereby, wherein I pray thee shewe mee thine opinion. D. this case seemeth to bee like to the case that thou hast put next before this, & that hee that knoweth the paiment to be made doth not as he would be done to, if he geue cōsil that an acti-

on should be taken to haue it paied againe. S.
 If he be s'wozne to geue counsel according to y^e
 law, as sergeants at the law be, it seemeth he is
 bound to geue counsaile according to the law,
 for els he should not perfoyme his othe. D. In
 those words (according to the law) is vnder-
 stand the law of God, & the law of reaso, aswel
 as the law & customes of y^e realme, for as thou
 hast said thy selfe in our first dialogue in latin,
 that the law of god & the law of reason, be two
 especial grounds of the lawes of Englād, wher-
 fore as me thinketh he may giue no counsel (sa-
 uing his othe) neither against y^e law of god nor
 the law of reason, & certein it is that this arti-
 cle, y^e is to say, y^e a man shall do as he woulde be
 done to, is grounde d bpō both y^e said lawes. And
 first y^e it is grounde d bpō the lawe of reaso, it is
 euident of it selfe. And in the vj. chap. of Saint
 Luke it is said, Et prout vultis vt faciant vobis homi-
 nes, & vos facite illis similiter. that is to say, al that
 other men should do to you: do you to them, &
 so it is grounde d upon the law of god, where-
 fore if he should geue counsaile against y^e defen-
 dant in y^e case he should do against both y^e sayd
 lawes. S. If the defendant had no other reme-
 dy but the common law. I would agree wel it
 were as thou saist, but in this case he may haue
 good remedy by a Sub pena: this is the waye
 that shal induce him directly to his Sub pena,
 that is to say, when it appeareth that y^e plain-
 tife shal recouer by the lawe. D. Though the
 defendant may be discharged by Sub pena yet
 the bringing in of his p'oues there, will be to
 the

bono remedi
 p' suppena

The vij. Chapter.

Nota
the charge of the defendant, and also the pzoues may dye oz they come in. Also there is a ground in the law of reason, quod nihil possumus contra veritatem (that is) we may doe nothing against the truth, & sith he knoweth it is truth that p money is payd he may do nothing against p truth, and if he should be of counsaile with the plaintiff, he must suppose & auerre that it is the very due debt of the plaintiff, & that the defendant withholdeth it frō him vnlawfully, which he knoweth him selfe to bee vntre, wherefore hee may not with conscience in this case be of counsaile with the plaintife, knowing that p plaintife is payde already, wherefore if thou be cōtented with this aunswere: I pray thee proceede to some other question. S. I will with good will.

¶ The vij. question of the Student.

¶ The vij. Chapter.

Nota
A Man maketh a feoffement to the vse of him of his heires, & after the feoffour putteth in his beasts to manure the ground, & the feoffee taketh them as damages felant, & putteth them in pounde, & the feoffour bringeth an action of trespass against him for entring into his ground &c. whether may any mā knowing the said vse be of counsaile with the feoffee to auoide the action. D. May he by the cōmon law auoide that action seing that the feoffour ought in cōscience to haue the profits? S. yea verely, for as to the com-

commo lawe the whole interest is in the feffe, & if the feoffe wil breake his cōscience, & take the profits: the feffour hath no remedy by the common lawe, but is dūtue in that case to sue for his remedy by subpena for the profittes, and to cause him to refoffe him againe, & that was sometime the most common case where the subpena was sued, that is to say, before h statute of R. 3. but with the statute, the feffor may lawfully make a feffement. But neuerthelesse for the profittes received, h feoffor hath yet no remedy but by subpena as he had before the laide estatute. And so the supposel of this action of trespass is vnttrue in euery point, as to the common lawe.

D. Though the action be vnttrue as to the lawe yet hee that sueth it ought in conscience to haue that he demaundeth by the action, that is to say, damages for the profits, & as it seemeth no man may with conscience geue cōsaile, against that he knoweth conscience woulde haue done. S.

Though conscience woulde hee shoulde haue the profits, yet cōscience wil not that for the attaining thereof the feoffor shoulde make an vnttrue surmise. Therefore against h vnttrue surmise e- uery man may with cōscience geue his cōsaile for in that doing he resisteth not the plaintiff to haue the profits, but hee withstandeth him that he should not maintain an vnttrue action for the profits. And it suffiseth not in h lawe, ne yet in conscience as me semeth, that a man haue right to that he sueth for, but that also he sue by a iust meanes, & that he haue both good right, & also a good and a true conuicience to come to his right for

p suppena

nota

*no in law nor
imprison*

The vij. Chapter.

for if a man haue right to lands as heire to his father, & he wil bringe an action as heire to his mother & neuer had ryght, euery man may giue counsaile against & action though he knowe he haue right by an other means, & so as me thinketh he may do in dilatozies, wherby the party may take hurt if it were not pleaded, though he knew the plaintife haue right, as if the party or & to some bee misnamed or if the degrees in wryts of entre be mistakē, but if & party should take no hurt by admittinge of a dilatory then he that knoweth & the pt hath right may not plede & dilatory with conscience as in a forme don to plede in abatement of & writ because he hath not made himselfe heire to him that was last seised, or in a writ of right for that the demaundant hath omitted one that tēded right in such other, ne he may not assent to the calling of an essoigne nor protection for him if he know that the demaundant hath right, ne he may not bouch for him, except it be that he knoweth & the tenant hath a true cause of a voucher, & of lien, & & he doth it to bring him therto, & in like wise he may not pray in aide for him vnles he know & praiser haue good cause of voucher & lien ouer, or that he knew that & praiser hath some what to plede & the tenat may not plede, as villeine in the demaundaunt, or such other. D.

Though the plaintife hath brought an action & is vntrue & not maintainable in the law, yet the defēdāt doth wrong to the plaitif in the withholding of the profits as wel before the action brought as hanging the action, and that wrong

note

as it seemeth the counsaillour doth maintaine & also sheweth himselfe to fauor the party in that wrong when he geueth counsaile against the action. **S.** If the plaintife doe take that for a fauour and a maintenaunce of his wronge, hee iudgeth farther then the cause is geuen, so that the counsaillor doe no more but geue counsaile against the action, for though hee geue him counsaile to withstand the action for the vnt ruth of it, and that he should not cōfesse it and to make thereby a fine to the kinge without cause, yet it may stand with reason that hee may geue counsaile to the party to peeble the profits, & therefore I thinke he may in this case be of counsaile with him at the cōmon law, & be against him in the chauncery, & in either court geue his counsaile without any contrariety, or hurt of conscience, and vpon this ground it is y a man may with good cōscience be of counsaile with him that hath land by discent, or by a discōtinuāce without title, if he that hath the right bring not his action according to the lawe, for the recouering of his right in that behalfe.

note

¶ The seventh question of the Student.

¶ The viij. Chapter.

[If a man take distress for debt vpon an obligation, or vpon a cōtract, or such other thing that he hath right tittle to haue, but y he ought not by law to distraine for it, & neuertheles he keepeth the

The viij. Chapter.

The same distresse in pound til he be paid of his
 duety, what restitution is he bound to make in
 this case, whether shal he repay the money be-
 cause he is cōe to it by an vnlawfull meanes, or
 only to restore the party for þe wrongfull takinge
 of þe distres, or for neither, I pray you shew me.
Q. What is the lawe in this case? **S.** That he
 that is distrained may bring a speciall action of
 trespass against him þe distrained, for þe hee took
 his beasts wrongfully, & kept them till hee made
 a fine & therefore he shal recouer þe fine in dama-
 ges, as he shal doe for þe residue of trespass, for þe
 taking of the money by such cōpulsion, is taken
 in þe lawe, but as fine wrongfully take, though
 it be his duety to haue it. **Q.** Yet though hee
 may so recouer, we thinketh þe as to þe repaymet
 of the money he is not bound thereto in consci-
 ence, so þe he take no more thē of right he ought
 to haue, for though hee come to it by an vnlaw-
 full meanes, yet when þe money is payde him, it is his
 of right & hee is not bound to repay it vnlasse it
 be recouered as þe saidst, and then when he hath
 repaide it, he is as mee thinketh restored to his
 first actiō, but to þe redeliuery of þe beastes wth such
 damages & such hurt as he hath by the distresse.
 I suppose he is bound to make recopence of this
 in conscience without compulsion or sute in the
 lawe, for though hee might lawfully haue sued
 for his duety in such maner as þe law hath orde-
 red, yet I agree wel þe he may not take vpon him
 to be his owne iudge, & to cōe to his duety against
 the order of the lawe, and therefore if any hurt
 cōe to the party by the disorder he is bound to
 restore

note

il quod dicitur
 in dō obligat
 ad restitu-
 tionem

restore it. But I would thinke it were y more
 doubt if a man took such a distresse for a tres-
 pas done to him, & kepeth y distresse til amends
 be made for the trespass, for in case that the da-
 mages bee not in certein but bee arbitrarie ei-
 ther by the assent of the parties or by s^r. i. i. &
 it semeth that there is no assent of the party in
 this case specially no free assent, for that he doth
 is by compulsion and to have his distress againe:
 and so his assent is not much to be pondered in
 that case, for at his assenting of him that took y
 distresse, and so he hath made himselfe his own
 iudge and that is prohibited in al lawes, but in
 that case where the distresse is take for debt, he
 is not his owne iudge, for the debt was iudged
 in certeyne before by the first contract & there-
 fore some thinke great dyuersitie betwene the
 cases. S. 16. y that reason it semeth that if he y
 distraineth in the first case for the debt take any
 thing for his damages, that he is bound in con-
 science to restore it again, for damages be ar-
 bitrarie and not certaine no more then trespass
 is, & it semeth that both in the case of trespass,
 & debt he is bound in conscience to restore that
 he taketh, for though he ought in right to have
 like summe as he receiveth, yet he ought not to
 have the mony that he receiveth, for he came to
 the money by an vniust meanes, wherefore it
 semeth he ought to restore it againe. D. And if
 he shoulde bee compelled to restore it againe:
 should he not yet (for that he received it once)
 be barred of his first action notwithstandinge
 the payment? S.

The viij. Chapter.

I wil not at this time clearely assoile the that
questiō, but this I wil say that if any hurt cōe
to him thereby, it is through his own default,
for that he woulde doe against the law, but ne-
uertheless a little I wil say to thy questyō, that
as me semeth whē he hath repaid the money &
he is restored to his first action. As if a manne
condempned in an action of trespass pay the mo-
ney, and after the defendant reuerse the iudge-
ment by a writ of errour & haue his money re-
paid, then the plaintife is restored to his first
action. And therfore if he that in this case took
the mony: restore that he took by the wrongful
distres: or that he ordered the matter so liberal-
ly that the other marmure not, ne cōplaine not
at it, me semeth he did very wel to bee sure in
conscience: and therfore I would aduise every
man to be wel ware how he distraineth in such
case against the law. D. Thy counsaile is good
& I note much in this case that the party may
haue an action of trespass against him & distrai-
ned so that he is taken in by law but as a wrong
doer, & therfore to pay the money againe is the
sure way as thou hast said before. And I pray
thee now shewe me for what a man may law-
fully distraine as thou thinkest.

¶ For what thing a man may lawfully
distraine.

¶ The ix. Chapter.

I man

*This is the first
action*

*Note for
benefit of
error*

A Manne may lawfullpe dystayne for a rent service and for all manner of seruices, as homage, fealty, escuage, suit of court, relieves and such other. Also for a rent reserved vpon a gift in talle, a lease for terme of life, for yeres, or at wil, if he reserve the reuerſid: the feffer shal distaine of common right though there be no distresse spoken of. But in case a man make a feoffment & that in fee by indenture, reseruing a rent, he shal not distaine for that rent vntill a distresse be expressely reserved, & if the feoffment be made without a dede reseruinge a rent, that reservation is void in the law, and he shal have the rent onely in conscience & shal not distaine for it, and like lawe is where a gift in talle or a lease for terme of life is made the remainder ouer in fee reseruinge a rent, that reservation is boide in the lawe. Also if a man seised of lande for terme of life graunteth away his whole estate reseruinge a rent, that reservation is void in the lawe without it be by indenture, and if it be by indenture: yet he shal not distain for the rent, but a distresse be reserved. Also for amerciamēt in a leete, the Lord shal distaine. But for amerciamēt in a court baron he shal not distaine.

Also if a man make a lease at Michelmās for a yere, reseruing a rent payable at the feast of Annunciation of our Lady and Saint Mich. the Archangel, in that case he shal distaine for the rent due at our Lady day but not for the rent due at Mychaelmas because the terme is expired.

R. ij.

W. ij.

Note

in case a man
make a feoffment
in fee by indenture
reserving a rent

where a lease
for terme of life
is made the remainder
over in fee
reserving a rent
is void in law

Note

Note

The ix. Chapter.

*negor ho
may distr.*
But if a man make a lease at y^e feast of Christmas for to endure to the feast of Christmas next followinge, that is to say for a yere, reserving a rent at the aforesaid feast of the Annunciation of our Lady and saint Michael the Archangel there he shal distraine for both the rents as long as the terme continued, that is to say til that aforesaid feast of Christmas.

note
And if a man have lande for terme of life of John at Stoke and maketh a lease for terme of yeres reserving a rent, that rent is behind and John at Stoke dieth, there he shal not distrain because his reversion is determined.

Also if he to whose use feffees bene seised maketh a lease for terme of yeres, or for terme of lyfe, or a gift in taile reserving a rent, there the reservation is good and the lessour shal distraine.

Distr. law.
note
And if a towne ship be amerced & that neighbours by assent assesse a certaine summe vpon every inhabitant, & agree that if it bee not paid by such a day, y^e certein persons therto assigned shal distraine. In this case the distress is lawfull. If lord & tenant be, & if the tenant do hold of the lord by fealty and rent, & the Lord doth graunt away the fealty reserving the rent, and the tenant attourneth, in this case he that was lord may not distraine for the rent, for it is become a rent secke. But if a man make a gyfte in taile to another, reserving fealty and certein rent, and after that hee graunteth awaye the fealty reserving the rent & the reversion to himselfe, in this case hee shal distraine for the rent,
for

for the graunt of the fealty is boide, for the fealty cannot be seuered fro the reuerſion. Also for heriote ſeruiſe, the Lord ſhal diſtraine & for heriote cuſtome he ſhall teſſe and not diſtraine, Also if a rent be aſſigned to make a partition or aſſignment of dowter egal, he or ſhee to whom that ret is aſſigned may diſtraine, & in all theſe caſes aboueſaid, where a man may diſtraine, he may not diſtrain in the night, but for damages feſant, that is to ſay, where beaſtes doe hurt in his ground he may diſtraine in the night. Also for waſks, for reparatiōs, for accōpts, for debts upon contracts, or ſuch other no mā may lawfully diſtraine.

And? Eriſthe

*mul homo pū
ſtrayno pū
roub oafte*

The viij. queſtion of the Student.

The x. Chapter.

I f a man doe a treſpas and after make hys executōrs & die befoze any amēds made, whether be his executōrs bounde in conſcience to make amēds for the treſpas if they haue ſufficient goods therto, though there be no remedy againſt them by the law to compell them to it. D. It is no doubt but they are bound thereto in conſcience befoze any other dede in charity they may doe for him of their oʒon deuotiō. S. The ſould I wit if the teſtator made legacies by his wil, whether the executōrs be bound to do ſuch, that is to ſay, to make amēds for ſ treſpas, or to pay the legacies, in caſe they haue no goods to doe bothe? D. To pay legacies,

Note

It. ij.

for

h. 1. 1. 1.

The x. Chapter.

for if they should first make recompence for the trespass and then haue not sufficient to pay the legacies: they shoulde be taken in the lawe as wastlers of their testators goods, for they were not compellable by no lawe to make amends for the trespass, because euery trespass dieth in the person, but the legacies they should be compelled by the law spiritual to fulfil and so they should be compelled to pay the legacies of their owne goods, & they shal not be compelled thereto by no law ne conscience, but if the case were that he leaue sufficient goods to doe both, then me thinketh they be bound to do bothe, & that they be bounden to make amends for the trespass befoze they may doe any other charytable dede for the testatour of their owne minde as I haue said befoze, except the funeral expences that be necessary which must be allowed befoze al other thinge. **S.** And what the prouing of the testament?

Noted in conside

D. The ordinary may nothing take by conscience therfore if there be not sufficient goods beside for the funerals to pay the debts & to make restitution. And in likewise the executours be bound to pay debts vppon a simple contract befoze any other dede of charity that they may do for their testatour of their owne deuotion though they shal not be compelled thereto by the law. **S.** And whether thinkest thou that they be bound to do first, that is to say, to make amends for the trespass, or to pay the debts vppon a simple contract. **D.** To pay the debts, for that is certain and the trespass is arbitrable. **S.**

Then

Then for þ plainer declaratyon of this matter
 and other like, I pray thee shew me thy minde
 by what law it is that if a mā may make execu-
 tours and that the executours if they take vpo
 them be bound to perfourme þ wil & dispose the
 goodes that remayne for the testatour. D. I
 thinke þ it is best by the law of reaso. S. And
 me thinketh that it should be rather by the cu-
 stome of the realme. D. In al countries and in
 al landes they make executours. S. That see-
 meth to be rather by a general custome, after þ
 the law and custome of property was brought
 in, then by the law of reason, for as long as all
 thinges were in common, there were no execu-
 tors ne swilles, ne they needed not then, & whe
 propertie was after brought in, me thinketh þ
 yet making of executours & disposing of goods
 by wil after a mans death folloiweth not neces-
 sarily thereupo, for it might haue ben made for
 a law that a man should haue had the propertie
 of his goodes onely duringe his lyfe, and that
 then his debtes paid, al his goodes to haue ben
 left to his wyfe and children or next of his kin
 wythout any legacies makinge thereof, and
 so might it now be ordeined by statute, and the
 statute good and not against reason, wherefore
 it appeareth that executours haue no authoritie
 by the lawe of reason, but by the lawe of man.
 And by the old law and custome of this realme
 a man may make executours and dyspose hys
 good by his wil, and then his executours shall
 haue the executio therof, & his heires shal haue
 nothing, but if any particuler custome helpe &
 the

by law of reason

statute good

note

The x. Chapter.

the executors shal also haue the whole possession
 & disposition of al his goods and chattels aswel
 real as personel, though no word be expressly
 spoken in the will, that they shal haue them, &
 they shal haue also actions to recouer al debtes
 due to the testator though al debtes & legacies
 of the testator be paid before, & shal haue y^e dis-
 position of them to the vse of y^e testator & not to
 their owne vse, & so me thinketh that y^e autho-
 rity to make executors & that they shal dispose
 the goods for the testatour: is by the custome of
 the Realme. But then I thinke as thou saist,
 y^e by the lawe of God they shalbe bound to doe
 the first, y^e is to the most profit of the soule of
 their testatour where the disposition thereof is
 left to their discretion, & that I agree wel is to
 pay debtes vpon contractes & to make amendes
 for wzonge done to the testator though they be
 compelled thereto by the law & custome of the
 realme, if there be none other debt nor legacy y^e
 they be bounde to pay by the lawe: but if two
 seuerall debtes bee payable by the lawe, then
 which debt they shall do first in conscience: I
 am somewhat in doubt. D. Let vs first know
 what the common law is therein. S. The co-
 mon law is, that if the testatour owe x. li. to
 two men seuerally by obligation or by such o-
 ther manner that an action lyeth against hys
 executors thereof by the lawe, and he leueth
 goods to pay the one and not both, that in that
 case hee that can first obtayne hys iudgement
 against the executors, shall haue execution of
 the whole, and the other shall haue nothing but
 to

*executors
 are to be
 disposed
 of by the
 will*

rule

*the first
 of the
 judgment
 against
 the
 executor*

to which of them he shal in conscience owe his favour: the common lawe reacheth not. D.

Therein must bee considered the cause why the debts began, and then hee must after conscience beare his lawfull favour to him that hath þe clearest cause of debt, & if both haue like cause, then in conscience hee must beare his favour where is most neede and greatest charity.

S. May the executors in that case delay that action that is first taken, if it stand not with so good conscience to bee payde, as another debt whereof no action is brought, and procure that an action may bee brought thereof, and then to confesse that action, that he may so haue execution, and then the executors to be discharged against the other? D. Why may he not in that case pay thother without action, and so be discharged in the lawe against the first?

S. No verely, for after an action is taken, þe executor may not minister the goods so, but þe he leaue so much as shal pay the debt whereof the action is taken, & if hee do not, he shal pay it of his owne goods, except an other recover & haue iudgement against him hanging that action, & that without couin.

D. Then to answer to thy question, I thinke that by delays that be lawfull, as by Colligie, emparlaunce, or by Dilatory plea in abatement of the writ that is true, he may delay it, but he may plede no barrat plea to preferre the other to his duty. But I praye thee what is the lawe of legacies, restitution, & debts, upon contracts, that percase ought rather after charity to

nota

executor nota

The x. Chapter.

to be paid then a debt vpon an obligatiō, what
may the fauour of the executour do in those ca-
ses. **S.** nothing, for if they either perfourme le-
gacies, make restitutions, or pay debts vpon
contracts, and keepe not sufficient to pay debts
which they are compellable by the law to pay,
that shalbe taken as a *Deuastauerunt bona testatoris*,
that is to say, that they haue wasted þ goods of
their testatour, and therefore they shalbe com-
pelled to pay the debts of their owne goods, &
so it is if they pay a debt vpon an obligation
whereof the day is yet to come though it bee
the clerer debt, and that be the more charity to
haue it payd. **D.** Yet in that case if he to whom
the debt is already owing, forbear till after a
day of the other obligation is past, then he may
pay him without daunger. **S.** That is true, if
there bee no action taken vpon it, and though
there bee, yet if that action may bee delayed by
lawfull meanes, as thou hast spoken of before,
till after the day, and that an action is taken v-
pon it, then may the executours confesse the ac-
tion, and then after iudgement hee may pay the
debt without daunger of the lawe. **D.** Is not
that confelling of the action so done of purpose
a couin in the law? **S.** No verely, for couine
is where the action is untrue, and not where
the executours beare a lawfull fauour.
D. The ordinary vpon the accompt in all the
case before rehearsed, wil regarde much what
is best for the testator. **S.** But hee may not
driue them to accompt against the order of the
common lawe.

The

¶ The ix. question of the Student.

¶ The xj. Chapter.

A Man is indebted to an other vpon a simple contract in xx. li. and he maketh his will and beq̄theth xx. li. to Henry Hart & dieth, & leueth goods to his executors only to bury him with, & to perfourme the said legacy, & after the sayd executors deliuer the goods of their testatour in perfourmance of the said bequest, whether is he to whō þ bequest is made, bound in conscience to pay the said debt vppon the simple contract to the said Henry Hart or not? D. Is he not bound therto by þ law? S. No verely. D. And what thinkest thou he is in conscience.

S. I thinke that he is not bound therto in conscience, for he is neither ordinarpe, administrator, nor executor. And I haue not heard that any man is bound to pay debts of any mā that is deceased, but he be one of those three, for the goods that þ testator left to the executors were neuer charged with the debt, but the person of the testatour while he liued was only charged with the debt, and not his goods, and his executors that represent his estate after his death hauinge goodes thereto of the testatours, bee charged also with the debts and not the goods. And therefore if an executor geue away or sel al the goods of the testatour, or otherwyle wast them, he that hath the goodes is not charged with the debtes in lawe nor conscience, but the executors shal be charged of their owne goods

The xj. Chapiter.

goods & in likewise if Jo. at Noke owe to A.
 B. xx.li. And A. B. oweth to C. D. xx.li. & af-
 ter A. B. dieth intestate hauinge none other
 goods but the said xx.li. which the said John at
 Noke oweth him, yet the said C. D. shal haue
 no remedy against the said John at Noke, for
 he standeth not charged to him in laswe nor cō-
 science. But the ordinary in that case must cō-
 mit administration of the goods of the sayd A.
 B. And the said administratour must leuy the
 money of the said John at Noke & pay it to y
 said C. D. And the said John at Noke shal
 not pay it him selfe because he is not charged
 therewith to him, and no more me thinketh in
 this case that he to whom y bequest is made, is
 neither charged to him y the money was owe-
 ing to, in the law or conscience. D. Then shew
 me thy minde by what laswe it is groundes as
 thou thinkest that executors be bounde to pay
 debtes before legacies, whether is it by the law
 of God, or by the law of reason, or by the law
 of man as thou thinkest: S. I thinke that it
 is both by y law of reason & by the law of god,
 for reaso wil that they shal do first that is best
 for the testatour, and that is to pay debtes that
 his testatour is bounde to pay before legacies
 that he is not bound to. And also by the law of
 God they are bound to pay the debtes first, for
 sith they are bounden by the lawe of God to
 loue their neighbour, they are bound to doe for
 him y shalbe best for him when they haue ta-
 ken the charge thereto, as executors do when
 they agree to take the charge of that will
 of

*debtes be-
 fore legacies*

of their testator vpon them, and it is better for the testatour that his debts be paid (wherefore his soule shal suffer paine) thē that his legacies be perfourmed, wherefore he shal suffer no paine for the perfourming of them.

And that is to be vnderstad̄ where the legacy is made of his owne free will and not where it is made as a satisfactiō of any duty. And after the saying of S. Gregoꝝy v̄ very true pꝛoofe of loue is the deede. But this mā is not in ȳ case, for he toke neuer the charge vpon him to pay the debts of the testatour. And therefore he is not bound to them in law nor conscience as me semeth. But rather the executors shoulde haue ben sware er they had paid the legacies, seeinge there were debtes to pay. D. The executors might noe otherwise haue don in this case but to pay the legacies, for thē they should haue ben compelled by the law to haue paid, and so they could not haue ben to haue paid the debt vpon a cōtract. And therefore they did wel in performing of that legacy, but he to whom the legacy was made ought not to haue taken thē but ought in conscience to haue suffered thē to haue gone to the payement of the debt, & sith he did not so but tooke thē where he had no right to them, it semeth that when he toke thē, he tooke with them the charge in conscience to pay the debt, for sith the executors were compellable by the law to perfourme that bequest & not to pay the det, therefore when they perforce that bequest, they were dyscharged thereby against him that the debt was owinge to, in the lawe and

note

major legacies
ought not to
have taken
the legacies
in bequest
of the

The xj. Chapiter.

and conscience & then þ charge rested vpon him that toke þ goods where he ought not in conscience to haue taken them, but if it had beene a debt vpon an obligatiō or such other debt wheruppon remedy hath bene had against the executors by þ law. ¶ I there suppose though þ the executors had performed the legacy, that yet he to whom þ legacy was made & performed, had not ben charged in conscience to the paymet of the debt, for þ executors stood stil charged thereto of their owne goods, & he to whom the bequest was made was only bound in conscience to repay that he receiued, to þ executors, because hee had no right to haue receiued it, for against the executors he had no right thereto. S. Then it seemeth in this case that in likewise he to whom that bequest was made, should repay that he receiued to the executors, and then they to pay it rather then he. D. The executors haue no farther meddling with it as this cases is, for whē they performed the bequest they were discharged against both the other in lawe and conscience, & also he to whom the bequest was made, stood not in this case charged to the executors, for against them hee had good title by the law, and so this charge standeth onely against him that the debt is owinge to: and the same lawe that is in this case vpon a debt vpon a contract is if the testatour had done a trespass wherupon he ought to haue made restitution, that is to say, that hee to whome the bequest is made, is bounde to make the amends for the trespass, for it shoulde be nor dyscharge to him

to pay it againe to the executors without they paid it ouer, & it were vncerteine to him whether they should pay it or not.

And therefore to be out of peril: it is necessary that he pay it him selfe, and then he is surely discharged against al men.

The x. question of the Student.

The xij. Chapter.

A Man seised of certain lad in his demeane as of fee, hath issue two sones and dieth seised, after whose death a stranger abateth, & taketh the profit, and after the eldest sonne dieth wout issue & his brother bringeth an assise of Mortdamester as sonne and heire to his father, not making mention of his brother and recouereth the lad with damages fro the death of his father as he may wel by the law, whether in this case is the yonger brother bound in conscience to pay to the executors of the eldest brother the value of the profits of the said land that belongeth to the eldest brother in his life or not? D. what is thine opinion therin? S. That like as the said profittes belonge of right to the eldest brother in his life, and that hee had full authorite to haue released aswel the ryght of the said lande as of the sayd profittes, which release shoulde haue bene a clere barre to the yonger brother for ever: That the right of the sayd damages

which

The xij. Chapiter.

which be in the lawe but a chattell, helonge to his executours and not to the heire, for no manner of chattell neither real nor personal shal not after the lawe of the realme dyscende vnto the heire.

D. Thou saidest in the case next before, that it is not of the lawe of reaso that a man shal make executours, & dispose his goods by his will, & the executours shal haue the goods to dispose but, by the lawe of man, & if it be left to the determination of the lawe of man.

That in such cases as y^e lawe geueth such chattels vnto the executours, they shal haue good right vnto them, and in such cases as the lawe taketh such chattels from them, they ben rightfully takē fro the. And therefore it is thought by many y^e if a man sue a writ of right of ward of a ward that he hath by his owne fee & dieth hanging the writ, & his heire sue a resumption according to the statute of West. seconde, & recovereth, that in that case the heire shal enjoy the wardship against the executours, & yet it is but a chattell, & they take the reason to be because of the laid statute, and so myght it be ordeined by statute, that al wardes should go to y^e heires and not to the executours. Right so in this case sith the lawe is such that y^e yonger brother shal in this case haue an assise of Mortdauincest as heire to his father not makinge any mention of his elder brother, and recover damages aswel in the time of his brother as in his owne time, it appeareth that the lawe geueth the right of these damages to the heire & therefore

Nota

*Damages due
to y^e yonger
brother*

foze no recompence ought to be made to the ex-
 ecutors, as me semeth, & it is not like to a writ
 of Aiel, where as I haue learned in Latin (sit) ^{wise}
 our first dialogue) the demaundant shall recouer
 damages only fro the death of his father, if hee
 ouerliue y Aiel, & the cause is, for that y deman-
 dant though his Aiel ouerliued his father, must
 of necessity make his conueiance by his father,
 & must make himselfe lone & heire to his father,
 and colin, & heire to his Aiel, & therefore in that
 case if the father ouerliued the Aiel, the abatour
 were bounden in conscience to restore to y execu-
 tors of the father the profits run in his time,
 for no lawe taketh them fro him, but otherwise
 in this case as me semeth. S. If the poger pro-
 ther in this case had entred into the lande wout
 taking any assise of Mortdacester as hee might
 if he would, to whom were y abator then bou-
 den to make restitutio for those profits as thou
 thinkest: D. To the executors of the eldest bro-
 ther, for in that case there is no law that taketh
 them from them, and therefore y general ground,
 which is, that al chattels shal goe to the execu-
 tors, holdeth in that case, but in this case that
 groude is broken & holdeth not, for the reason y
 I haue made before, for commonly there is no
 generall ground in the lawe so sure, but that it
 faileth in some particuler case.

nota

Summary of
 the executor
 del loigne
 In 10

¶ The xi. question of the
 Student.

¶ The xij. Chapter,

The xiiij. Chapter.

A Man seised of lande in fee taketh a wife, and after alieneth y^e lande, and dieth, after whose death his wife asketh her dower, & the alienee refuseth to assigne it unto her, but after she asketh her dower again, and he assigneth it vnto her, whether is y^e alienee in this case bound in conscience to geue the womā damages for y^e profits of the land after her third parte frō the death of her husbād, or frō the first request of her dower, or neither the one nor thother? D. What is the law in this case. S. by the law the woman shal recover no damages, for at the cōmon law, the demaundant in a writ of dower shoulde neuer haue recovered damage. But by the statute of Merton it is ordained, that where y^e husbāde dieth seised, y^e the woman shal recover damages which is vnderstand the profits of the land sith the death of her husband, and such damages as she hath by the forbearing of it, but in this case the husband died, not seised, wherefore she shal recover no damages by the law. D. yet the law is, that immediatly after y^e death of her husbād the wife ought of right to haue her dower, if she aske it though her husband dyed not seyled.

S. That is true.

D. And sith she ought to haue her dower from the death of her husband, it semeth y^e she ought in conscience to haue also the profits, from the death of her husbād, though she haue no remedy to come to them by y^e law, for mee thinketh that this case is like to a case that thou putttest in our first Dialogue in Latin, the xviij. Chapter, That if a tenant for tme of life be disseised and

dyed.

*Note
for dower*

*la femme
reçoit
ses damages*

die, and the disseisor dieth, & his heire entreth & taketh the profits, & after he in þe reuerſiõ recovereth the landes against the heire, as he ought to do by þe law, that in that case he ſhal recover no damages by the lawe. And yet thou didest agree that in that case the heire is bound in conscience to pay the damages to the demandant, & so mee thinketh in this case that þe feoffee ought in conscience to pay the damages fro the death of her husband, ſeing that immediately after his death she ought to haue her dower. S. though she ought to be endowed immediately after the death of her husband, yet she can lay no default in the feoffee til she demand her dower vpon þe ground, & that the tenant be not there to assigne it, or if he be there þe wil not assigne it, for hee þe hath the possession of lād wherunto any woman hath title of dower, hath good authoritie as against her to take þe profits til she require her dower: for every woman that demandeth dower affirmeth the possession of the tenant as against her, & therefore although she recover by action, she leueth the reuerſion alway in him against whom she recovereth, though he be a disseisor & bringeth not the reuerſion by her recovery to hym þe hath right as other tenants for terme of lyfe doe. And for this reason it is that the tenant in a writte of dower, where the husbände dyed seiled if he appeare the first day, may say to excuse himselfe of damages that he is & all tymes hath ben redy to yeld dower if it had ben demanded, & so he ſhal not be receiued to doe in a writ of coſnage, neither in the case þe thou rememberest

disseisor in me

note

The xiiij. Chapter.

aboue, for in both cases the tenants be supposed by the writ to be wrong doers, but it is not so in this case, and so mee thinketh it clere in the fesset in this case shal neuer be bound by law, nor conscience to yeld damages for the time y passed before the request, but for the time after y request is great doubt, howbeit, some thinketh him not there bound to yeld damages, because his title is good, as is said before, and that it is her default that she brought not her action. And as vnto the time before the request I hold me content with thine opinion so y he assigne the dowter when he is required, but when he refuseth to assign it, the I thinke him bound in conscience to yeld damages for both times, though he shal none recover by the law. And first as for the time after y refusal, it appeareth evidently that when he denied to assigne her dowter, he did against conscience, for he did not that he ought to haue don by y law, ne as he would shoulde haue bene don to him, & so after y request yee holdeth her dowter fro her wrongfully, & ought in conscience to yeld damages therefore. And as to the default y thou assignest in her, that she tooke not her action, that forceth litle, for actions nede not but where the party will not do that he ought to do of right. And for that he ought of right to haue don and did it not, he can take none aduantage, & then as to the damages before the request, mee thinketh him also bounden to pay them, for when he was required to assigne dowter and refused. It appereth y he neuer intended to yeld dowter fro y beginning, & so he is a wrong doer in his owne
con=

conscience, and more ouer, if the husband die seized, the law is such, that if the tenant refuse to assigne dower when he is required, wherfore þ woman bringeth a writ of dower against him þ in þ case the womā shal recouer damages aswel for the time before þ request as after, & yet hee ought not in that case after thine opinion to haue yeilded any maner of damages if he had be ready to assigne dower when it was demanded, as some thinketh here. S. The cause in þ case that thou hast put, is for that the statut is general that the demandant shal recouer damages, where the husbāde died seized, & that stat hath bene alway construed that where the tenant may not say þ he is, & hath ben alway ready to yelde dower &c. þ the demandant shal recouer damages from the death of her husband. But in this case there is no lawe of the realme that helpeth for the demandant neither common law, nor statute, & furthermore though it might be proued by his refuse þ he neuer intended fro the death of þ husband to assigne her dower, yet that proueth not, but that he had good right to take the profits of her third part for the time, as wel as he had of his owne ii. parts: till request be made, as is aforesaid, & so mee thinketh that notwithstanding þ deniall, he is not bounde to yelde damages in this case, but for the time of the request, & not for þ time before. D. For this time I am content with thy reason.

verdict of
dower

Damages to
y^e demandant
after refusal

The xij. question of the student.

The xiiij. Chapter.

L. ij,

A

The xiiij. Chapter.

A Man seysed of certeyn lands knowing that another hath good right and title to them leueth a fine with proclamation to the intent he would extind the right of the other man, & the other mā maketh no claime within the v. yeres whether may he that leuied the fine hold y^e lād in cōscience as he may doe by the law? D. By this question it seemeth that thou doest agree that if he that leuied y^e fine had no knowledge of the other mans right, that his right shoulde then be extind by the fine in cōscience, S. Ye verely, for thou diddest shew a reasonable cause why it should be so in our first dialogue in Latin the xiiij. Chapter, as there appeareth. But if he that leuied a fine and that would extind y^e right of another, knowing that y^e other had more right then he, then I doubt therein for I take thine opinion in our first dialogue to be vnderstand in conscience, where he that would extind former rights by such a fine with proclamatiō, knoweth not of any former tytle, but for hys more suerty if any such former right be: he taketh the remedy that is ordained by y^e law. D. Whether doest thou meane in this case y^e thou putteth now that he that hath right, knoweth of y^e fine & wilfully letteth the v. yeres passe w^out claime or that he knoweth not any thing of y^e fine? S. I pray thee let me know thine opinion in both cases & whether thou thinke y^e he y^e hath right be barred in either of y^e said cases by cōscience as he is by y^e lawe or not. D. I will in good wil hereaft shew thee my mind therein: but at this time I pray thee geue a litle sparig & p=

cede

note

cede now for this time to some other question.

¶ The xiiij. question of the Student.

¶ The xv. Chapter.

A Man seised of certeine landes in fee hath a daughter, which is his heire apparaunt, the daughter taketh a husband, and they haue issue: the father dieth seised, & the husband, as sone as he heareth of his death, goeth toward the land to take possession, & before he can come there, his wife dieth, whether ought he to haue þ land in cōscience for terme of his life, as tenāt by þ curtesy because he hath done þ in him was to haue had possession in his wifes life, so þ hee myght haue ben tenant by the curtesy according to the law, or þ he shal neither haue it by the law, nor conscience. D. Is it clerely holden in the lawe that he shal not be tenāt by the curtesy in this case, because he had not possession in deede. S. Ye verely, and yet vpon a possession in lawe a woman shal haue her dower, but no man shal be tenāt by þ curtesy of land, without his wife haue possession in deede.

D. A man shalbe tenant by the curtesy of a rēt though his wife die before the day of payment, & in likewise of an aduowse though she die before the auoidance. S. That is truth, for þ olde custome & maxime of the law is, þ he shal be so, but of land there is no maxime that serueth him but his wife haue possession in deede. D. And what is þ reaso þ there is such a maxime in the lawe

L. iiij.

*some more must be
said of the lawe.*

*possession
dower*

aduoſon.

note

Nota by
reason

note

lawe of the rent & of the aduowson, neither then
of lande, when the husband doth as much as in
him is to haue possession and cannot. S. Some
assigne the reason to be because it is impossibl^e to
haue possession in dede of y^e rent or of aduowson
before the day of payment of y^e rent, or before the
auoidance of y^e aduowson. D. And so it is im-
possible that he shall haue possession in dede of
land if his wife dye so sone that hee may not by
possibilitie come to the lande after his fathers
death, and in her life as the case is. S. the lawe
is such as I haue shewed thee before & I take y^e
very cause to be for that there is a maxime ser-
ueth for the rent & the aduowson, & not for the
lands, as I haue said before, and as it is said in
the viij. Chap. of our first dialogue, it is not al-
way necessary to assigne a reason or considera-
tion why the maximes of the lawe of Enlande
were first ordeined & admitted for maximes, but
it sufficeth that they haue bene alway taken for
lawe and that they bee neither contrary to the
lawe of reason, nor to y^e lawe of god as this maxi-
me is not, & therefore if y^e husbände in this case
be not holpen by conscience, he cannot bee holpen
by the lawe. D. And if the lawe help him not,
conscience cannot help him in this case, for con-
science must alway be groundēd vpon some lawe,
and it cannot in this case bee groundēd vpon the
lawe of reason, nor vpon the lawe of god, for it is
not directly by those lawes, y^e a man shalbe re-
nat by y^e curtelie, but by the custome of y^e realm.
And therefore if the custome help him not, hee
can nothing haue in this case by conscience, for
consci-

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conscience neuer reſiſteth þe lawe of man, nor ad-
deth nothing to it, but where the lawe of mā is
in it ſelfe directly againſt the lawe of reaſon, or
els the lawe of god, & then properly it cannot be
called a lawe but a corruption, or where the ge-
neral groundes of the lawe of man worketh in a-
ny particuler caſe againſt thoſaide lawes as it
may doe, and yet the lawe good, as it appereth in
diuers places in our firſt dialogue in latin, or
els where there is no lawe of man provided for
him that hath right to a thing by þe lawe of rea-
ſon, or by the lawe of god. And then ſometime
there is reamedy geuen to execute that in conſci-
ence, as by a ſubpena, but not in al caſes, for ſom-
time it ſhalbe referred to the conſcience of þe par-
ty, & vpon this ground (that is to ſay) þe when
there is no title geuen by the comon lawe, that
there is no title by conſcience. There be diuers
other caſes, whereof I ſhal put ſome for an ex-
ample. As if a reuerſion be granted vnto one,
but there is none attournment, or if a new rent
be granted by word without deede: there is no re-
medy by conſcience vnles the ſaid grantees were
made vpon conſideration of money, or ſuch other.
And in likewiſe where hee þe is ſeiſed of landes
in fee ſimple maketh a wil thereof, þe wil is hold
in conſcience, becauſe þe good ſerueth not for him
whereby the conſcience ſhould take effect, þe is to
ſay, the lawe, & if the tenat make a feoffment of
the land that he holdeth by priority, and taketh
eſtate againe, and dieth (his heire within age)
the lord of whom the land was firſt holden by
priority, ſhall haue no remedy, for the body by
conſci-

The xvj. Chapter.

nota
conscience, for the law þ first was with him, is now against him, and therefore conscience is altered in likewise as the law altereth, & diuers & many cases like be in the law þ were to longe to rehearse now. And thus me thinketh þ if the law be as thou saiest: þ husband in this case hath neither right by the law, nor conscience.

¶ The xiiij. question of the student.

¶ The xvj. Chapter.

for rent granted
A Rent is graūted to a man in fee to perceiue of two acres of land, & after the graūtour enfeoffeth þ graūtee of one of the said acres, whether is the whole rent extinct thereby in conscience as it is in the law. D. This case is somewhat vncertaine, for it appereth not whether þ graūtor enfeoffed him on trust, or that he gaue the acre to him of his mere motion, to þ vse of þ said feoffee, or els þ þ feoffemēt was made vpon a bargaine, & if it were but only a feoffement of trust, the I thinke þ whole rent abideth in conscience though it be extinct in the lawe, & first that it cōtinueth in þ case in cōsciēce, for þ part that þ graūtee hath to the vse of þ graūtor, it is euident, for he may not take þ profits of þ lāde & it is against conscience þ he should leese both, & in likewise it abideth in conscience, for þ acre þ remaineth in þ hād of þ graūtor, though it be extinct in the lawe, for there was a default in þ graūtor, þ he should make the feoffemēt to the grātee, as wel as there was in þ grātee to take it.

it. And it is no conscience that of his own default he should take so great anail to be discharged of y^e whole rēt, seing that the feoffment was made to his own vse. And if the feoffment were made by a bargaine & a contract betwene thē, then it is to see whether they remembred the rēt in their bargaine, or y^e they remembred it not, & if they remembred in their bargaine & cōtract, then cōscience must followe the bargaine as thus, yf they agreed that y^e grauntē should haue the rēt after the portion in the other acre, thē by cōscience he ought to haue it though it be extincted in the lawe. And if they agreed that the whole rēt should be extinct & made their price accordig then it is extinct in lawe & conscience, & if they clerely forget it & made no mention of it, or for lacke of cunning toke the lawe to be y^e it should cōtinue in the other acre after y^e portion, & made their price accordig, pondering only the value of the acre that was sold: then me thinketh, it doth cōtinue in conscience after the portion, & if the feoffment were made to the vse of the grauntē then it semeth the whole rent is extinct in lawe & conscience. S. Then take that to bee the case that is to say that the feoffment was made to the vse of the grauntē. D. What is then thine opinion therein?

S. That the rent should abide in conscience after y^e portion for the acre remaining in the hād of the grauntour, notwithstanding it be extinct in the lawe. Doctor. Then shewe me thine opinion in this y^e I shal aske thee. Of what lawe is it that graunters of rent and of such other

note

rent extinct

The xvj. Chapter.

profits out of lands may be made and that they
shalbe good & effectual to the grañtees, whether
is it by the law of reason or by the law of god,
or by the custōe & law of y^e realme. S. I thinke
it is by the law of reason, for by the same reasoñ
that a mā may geue away al his landes, he may
as it seemeth geue away the profits thereof or
graunt a rent out of the land if he wil. D. But
then by what law is it that a man may geue a-
way his lands. I trow by none other law but
by the custōe of the realm, for by statute al alie-
nations & gifts of lāds may be prohibited, & the
that reason proueth not that grañtees of y^e pro-
fits of land or of a rēt should be good because he
may alien the lande, if alienations of land be by
custome & not by y^e law of reason as I suppose
it is, whereof I touched somewhat in our first
dialogue in Latin the xix. Chapter. And also if
graunts should haue their effect by the lawe of
reason: then reasoñ would y^e they shoulde be good
by the onely word of the grauntour as well as
by his deede, & that is not so, for wout deede the
graunt of rent is void in the law, & so me thin-
keth that graunts haue their effect onely by the
law of the realme. S. (Admit it to be so) what
meanest thou thereby. D. I shall shewe thee
hereafter, as I shall shew thee the cause why
I thinke y^e rent is extinct in conscience, as wel
as in law. And first as I take it y^e reason whye
it is extinct in the law, is because the rēt by the
first grañt was going out of both acres, & was
not going part out of the one acre, & part out of
the other, but the whole rent was goinge out
of

by y^e law
of reason

the graunt of
rent void
And I see

extinct et
ratio

of both, and then when the graunter of his owne folly wil take estate in y^e one acre wherby that acre is discharged, then the other acre also must be discharged vnles it should be apportioned & y^e law wil not that any apportionment should bee in y^e case, but rather in asmuch as the party hath by his owne act discharged the one acre: y^e lawe discharged also the other, rather then to suffer the other acre to be charged contrary to y^e forme of the grant, for this ret beginneth al by the act of the party & as I haue heard, is called a rent against comen right, wherfore it is not fauored in the lawe as a ret seruice is, & the me thinketh that for asmuch as it is not grounded by the lawe of reason that graunts of rent should be made out of lande, but by custome and lawe of the realme as I haue said before, that so in like wise it remaineth to the lawe and custome of the realme to determine how long such rents shall continue. And when the lawe iudgeth such rents to be voide: I suppose that so doth conscience also, except the iudgement of the lawe be against the lawe of reason or the lawe of God, as it is not in this case, for in this case hee that taketh the feoffement hath profit by the feffement and knoweth y^e he hath such a rent out of the lande, & that this purchase should extinct it, whereby it appeareth that hee assenteth vnto the lawe whereto he was not compelled, and that is his owne act and his owne default so to do, which shal extinct his whole rent as well in conscience as in the lawe. But if hee haue no profite of the lande or bee ignorant that hee hath such a rent

*he is discharged of the
charge and the
lawe is satisfied
laudem*

rent out of the land which is called ignorance of the dede, or if he be ignorant that the lawe would extinct his whole rent thereby, which is called ignorance of the law, then me thinketh it remaineth in conscience after the portion. **S.** Ignorance of the law or of the dede helpeth not but in few cases in the law of England. **D.** And therefore it must be reformed by conscience, that is to say by the law of reason, for where the general maxims of y^e law be in any particular cases against y^e law of reason, as this maxime seemeth to be, because it excepteth not the y^e be ignorant though it be an ignorance invincible, the doth it not agree with the law of reason. **S.** We thinketh that ignorance in this case helpeth little for when a man buyeth any land or taketh it of y^e gift of any other, he taketh it at his peril, so that if the title be not good: ignorance cannot helpe, for y^e buier must beware what he buyeth, & so in this case if the takinge of one acre should extinct the whole rent in conscience, if he were not ignorant, so me thinketh it should in likewise extinct it also though he be ignorant of the law or of the dede: for every man must be compelled to take notice of his owne title: & out of what land his rent is going, & so me thinketh ignorance is but litle to be considered in this case. **D.** If a man buy land or taketh it of the gift of an other it is reason y^e he take it wth the peril though he be ignorant that an other hath right, for it were not standing with reason that his ignorance should extinct the right of an other, but in this case there is no doubt of y^e right

of the land, but al the doubt is how the rēt shall
 be ordred in conscience, if he p hath the rēt take
 part of the land, & therein is great diuersity be-
 twene him that is ignozant in the lasw, and him
 that knoweth the laswe, & knoweth well also p
 he hath a rent out of that lande and other. For
 I put case that he asked counsaile of the graun-
 tor himselfe therein, & hee saying as he thought
 told him that the taking of the one acre should
 not exting the rent but for p portion, and so hee
 thinking p lasw to be, take the other acre of his
 gift: Is it not reasonable in p case, that p igno-
 rance should saue the rent in conscience. S. yes
 for there the grauntour himselfe is party to his
 ignoraunce and in maner the cause thereof. D.
 And me thinketh al is one if any other had she-
 wed him so, or if he asked no counsaile at al, for
 me thinketh it suffiseth in this case that hee bee
 ignozant of the laswe, for why, it is moze harde
 in this case to proue the rent should be extinde
 in conscience, though he knewe it should be ex-
 tint in the lasw, then to proue that it cōtinueth
 in cōscience after the portion if he be ignozāt, &
 thou thy selfe were of p same opinion as it ap-
 peareth in the beginning of this present chap-
 ter, but if p opinion were true, it would be hard
 to proue but that the said general maxime were
 wholly against reason, & then it were boide, but
 I haue sufficiently answered therto as me se-
 meth, and that it is extinct in the laswe, and also
 in cōscience, except ignozāce help it to be appor-
 tioned. And mozeouer, forasmuch as apporciō-
 ment is suffred in the lasw where part of p land
 disce-

notai

The xvij. Chapter.

discordeth to the graunter, because no default can be assigned in him, some thinke no default can be assigned in him in conscience, when hee is ignorant of the lawe or of the dede though such ignorance, do not excuse in y^e lawe of the realme. S. I am content with thine opinion in this behalfe at this time.

The xv. question of the student.

The xvij. Chapter.

A Man graunteth a rent charge out of two acres of land, & after the grauntour enfeofeth Henry Hart in one of the said two acres to the vse of the said Henry Hart and of his heires, & after the said Henry Hart intending to extingal y^e rent, causeth the said acre to be reconeered against him to his owne vse in a writ of entre in the post in y^e name of the graunter, & of other after the comon course, the graunter not knowing of it, & by the force of the said recovery, y^e other remaundants entre & die, leaving y^e graunter, so that the graunto^r is seised of al by the survivor to the vse of y^e said H. Hart, whether is the saide rent extinct in conscience in part or in al, or no parte? D. I am in doubt of y^e lawe in this case. S. In what point. D. whether the whole rent be going out of y^e acre that remaineth in the handes of the graunto^r because the graunter cometh to the lād by way of recovery, or that it shalbe extinct in the lawe, but after y^e portion because y^e graunter hath not the acre to his owne vse, or that the whole

Whole rent shalbe extinct in the lawe. S. The rent cannot be whole going out of the acre y^e the grauntour hath, for this recovery is vpon a fained title, and the grauntour because hee is straunge to it shalbe wel receiued to falsifie it. But if the recovery had bene vpon a true title, then it had ben as thou saist, for if the grauntee recover the one acre against the grauntor vpon a true title, the grauntour shall paye the whole rent out of that land that remaineth in his hand & as to the vse it maketh no matter to the grauntour as to the lawe in whom the vse be, for the possessiō wout the vse extinguisheth the whole rent as against him in the lawe as well as if y^e possession and vse were both ioined together in the grauntee. D. Then me thinketh that the sayed Henry Parte is bounde in conscience to pay the grauntee the rent after the portion of y^e acre that was recovered, for it cannot stande with conscience that he should lose his rent & haue no profits of the lande. S. Then of whom shal he haue y^e other portion of his rent? D. Is y^e lawe clere that the acre that the grauntor hath shalbe in this case discharged in the lawe? S. I take the lawe so.

D. And what in conscience? S. As against the grauntour me thinketh also it is extinct in conscience for the reason that thou hast made in the xvi. Chapter, for it is all one in conscience in this case as agaynst the grauntour, whether the recoverye were to the vse of the grauntee or not, specially seynge that the grauntour is not priuy to the recovery, for the vniy of possession

to pay y^e portion

The xvij. Chapter.

*extinct in
law & con-
science*

is the cause of extinguiſhment of the rent againſt the grauntor both in law and conſcience, where ſo euer the uſe be, but if the grauntour had bene priuy to the cause of the extinguiſhment, as hee was in the caſe that I put in the laſt Chapter, where the grauntour enſcoffed the grauntee of one of the acres, to the uſe of the grauntee, there it is not extinct in conſcience in that acre that remaineth in the hands of the grauntor, though it be extincted in the lawe, becauſe hee was priue to the extinguiſhment himſelfe, but hee is not ſo in this caſe, & therfore it is extinct againſt him in law & conſcience. And therfore me thinketh that the grauntee ſhall in conſcience haue the whole rent of the ſaide Henry Hart, that cauſed the ſaid recovery to be had in his name, for in him was al the default, but it is to be vnderſtand that in all the caſes, where it is ſayde before in this chapter, or in the chapter next before, that the rent is extinct in the lawe, and not in conſcience, that in ſuch caſe, all the remedies that the party might firſt haue had for the rent at the common law by diſtreſſe, aſſiſe, or otherwiſe, are determined, and the party that oughte to haue the rent in conſcience, ſhalbe driuen to ſue for his remedy by Sub pena. D. I am content with thy conceipt in this matter for this time.

¶ The xvj. queſtion of the ſtudent.

¶ The xviij. Chapter.

A Villaine is graunted to a man for terme of life, the villayne purchaseth landes to him and to his heires, the tenat for terme of life en- treth, in this case by the laswe hee shal enioy the lands to him and to his heires, whether shal he do so in likewise in conscience?

D. We thinketh it first good to see whether it may stande wth conscience that one manne may claime an other to be his villeine, and that he may take from him hys landes and goods, and put his body in prison if he will, it seemeth he loueth not his neighbour as hym selfe that doth so to him.

S. That laswe hath bene so longe vsed in this realme and in other also, and hath bene admyt- ted so long in the lawes of this realme, and of diuers other lawes also and hath ben affirmed by Bishops, Abbotts, Priors, and many other men both spirituall and tempozall which haue taken aduantage by the sayed laswe, and haue seysed the landes and goodes of their villeines thereby, and cal it their right enheritance so to doe, that I thinke it not good now to make a doubt, ne to put it in argument whether it stande wth conscience or not, and therefore I praye thee, admittinge the laswe in y^e behalfe to stande in conscience, shew me thine opinion in y^e ques- tion that I haue made.

D. Is the laswe clere that he that hath the vil- laine but only for the terme of life, shal haue the lands that that villain purchaseth in fee to him- e to his heires. S. Ye verely I take it so. D. I should haue taken y^e lasw otherwise, for if a seig-

good b. 9
in lawes
conscience

The xviii. Chapter.

noꝝ be graunted to a man foꝝ terme of life and the tenaūt attourne, & after the land escheate & the tenaūt foꝝ terme of life entreth, he shal haue there none other estate in the land then hee had in the seignioꝝ, and me thinketh that it should be like law in this case, & that the loꝝd ought to haue in the land, but such estate as hee hath in the villeine. **S.** The cases be not a like, foꝝ in p case of the eschete the tenaūt foꝝ terme of life of the seignioꝝ, hath the landes in the lieu of the seignioꝝ, that is to say, in the place of p seignioꝝ, and the seignioꝝ is clerely extind, but in this case he hath not the lande in the lieu of the villeine, foꝝ he shal haue the villeine still, as hee had befoꝝe, but he hath p lands as a profit come by meanes of the villeine, which hee shall haue in like case as the villeine had them, that is to say, of all goods and cattells hee shall haue the whole property & of a lease foꝝ terme of yeares he shal haue p whole terme, and foꝝ terme of life he shal haue the same estate, the loꝝde shall haue the lande during the life of the villeine and of land in fee simple, and of an estate taile that the villeine hath, the loꝝde shall haue the whole fee simple, although hee had the villeine but onely foꝝ terme of yeares, so that hee entre oꝝ seise according to the lawe befoꝝe the villeine alien, oꝝ els he shall haue nothing.

D. Merely, and if the lawe bee so, I thinke conscience followeth p lawe therein, foꝝ admitting that a man may with conscience haue an other man to bee his villeine, the iudgement of the lawe in this case as to determine what estate p

Loꝝd

+ de pꝛy

Nota

all goa
to pꝛy
no foꝝ
seignioꝝ
yeares
to pꝛy
seignioꝝ
in fee

Lord hath in the land by his entre is neither against the law of reason nor against the law of God, and therefore conscience must followe the law of the realme, but I pray thee let me make a litle digression to here thine opinion in another case somewhat pertaining to the question, & it is this, if an executor haue a villeine, that his testator had for terme of yerres, & he purchaseth lands in fee, and the executour entreth into the land, what estate, hath hee by his entre.

S. A fee simple, but that shalbe to the behoufe of the testatour & shalbe an alletes in his habes.

D. Well then I am contented with thy conceipt at this time in this case, and I pray thee proceede to another question. S. For almost as it appeareth in this case and in some other before that the knowledge of y^e law of Englanbe is right necessary for the good ordering of conscience: I would heare thine opinion, if a man mistake the law what daunger it is in conscience for the mistakinge of it. D. I praye thee put some case in certaine therof that thou doubttest in, and I will with good wyll shewe thee my minde therein, for els it will be somewhat long or it can be plainly declared, and I

would not be tedious in this writinge.

The xviij. question of the Student.

The xix. Chapter.

M. iij.

The xix. Chapter.

A Man hath a villeine for terme of life, & byllaine purchaseth lands in fee as in the case of the last chapter, and the tennaunte for terme of life entreth, and after the villaine dyeth, hee in the reuerſion pretendinge, that the tennaunte for terme of life hath nothing in the lande, but for terme of life of the villaine, asketh counsaile of one that sheweth him that hee hath good righte to the land, and that he may lawfully enter, and through that counsaile hee in the reuerſion entreth, by reason of the which entre, great suites and expenses follow in the lawe, to the great hurt of both parties, what daunger is this to him that gaue the counsaile. **D.** Whether meanest thou that hee that gaue the counsaile, gaue it willingly against the lawe, or that hee was ignorant of the lawe. **S.** That he was ignorant

Nota

of the lawe, for if he knewe the lawe, and gaue counsaile to the contrary, I thinke hym bound to restitution both to him against whom he gaue the counsaile, and also to his client (if he would not haue sued, but for his counsaile, of al that they bee dampniſhed by it.

D. Then wil I yet further aske thee this question, whether he of whom hee asked counsaile gaue himſelfe to learning, & to haue knowledge of the lawe after his capacity, or y he toke vpon him to geue counsaile, & tooke no study competent to haue learning, for if he did so, I thinke he bee bounden in conscience to restitution of all the costes, & damages that he sustayned to whom hee gaue counsaile, if hee would not haue sued but through the hys counsaile. And also to the other

other party, but if a man that hath taken sufficient study in the law, mistake the law in some point that is hard to come to the knowledge of, hee is not bounden to such restitution, for hee hath done that in him is, but if such a man knowing the lawe giue counsaile against y^e lawe: he is bound in conscience to restitution of costs and damages as thou hast saide before, & also to make amends for the vntruth.

*a man know-
ing the law
giue counsaile
against y^e
lawe is bound
by conscience
to make restitu-
tion*

S. What if hee aske counsaile of one that hee knoweth is not learned & he geueth him counsaile in this case to enter, by force whereof hee entreth. D. then be they both bound in conscience to restitution, that is to say, the party if he be sufficient, & els the counsaillour because he assented and gaue counsaile to the wronge.

S. But what is the counsaillour in that case bounden to him that he gaue counsaile to. D. To nothing, for there was as much default in him that asked the counsaile, as in him that gaue it, for hee asked counsaile of him that hee knewe was ignorant, and in the other was default for the presumption, that hee woulde take vpon him to geue counsaile in that hee was ignorant in.

S. But what if hee that gaue the counsaile knewe not but that hee that asked it, had trust in him, that he coulde and woulde geue him good counsaile, and that he asked counsaile for to order well his conscience, howbeit, that the truth was, that hee coulde not so doe.

D. Then is he that gaue the counsaile bounden to offer to the other amendes, but yet the other may not take it in conscience.

S.

That

That

The xix. Chapter.

note ~~That were somewhat perilous, for happily~~
~~he would take it though he haue no right to it,~~
~~except the worlde be well amended.~~ D. What
thinkest thou in that amendement. S. I trust
every man will doe now in this world as they
would be done to, speake as they thinke, restore
where they haue done wronge, refuse money if
they haue no right to it, though it be offered the
doe that they ought for to doe by conscience, &
though that they cannot be compelled to it by
no law, & that none wil geue counsaile, but that
they shal thinke to be according to conscience, &
if they do, to doe y they can to refozme it, & not
to entermit theselues w such matters as they
be ignorant in, but in such cases to send them y
aske the counsaile to other, that they shal thinke
be moze cunning then they are.

D. It were very wel if it were as thou haste
said, but the moze pity is, it is not alway so, &
especially there is great default in geners of
counsaile, for some for their owne lucre, and pro-
fit geue counsaile, to comfort other to sue that
they knowe haue no right, but I trust there be
but fewe of them, and some for dreade, some for
fauour, some for malice, and some vpon conside-
rations and to haue as much done for them an
other time to hide the truth. And some take v-
pon them to geue counsaile in that they be ig-
noraunt in, and yet when they know the truth
wil not withdraue that they haue misdona, for
they thinke it should be greatly to their rebuke,
and such persons follow not this counsaile that
sayth. (That we haue vnadvisedly done: let vs
with

with good aduise reuoke againe.) S. And if a man geue counsaile in this realme after as hys learning & conscience geueth him, & regardeth not the lawes of þ realme, geueth he good counsaile? D. If the lawe of the realme bee not in that case against the law of God nor against þ law of reason, he geueth not good counsaile for every man is bound to folloswe the lawe of the coutry where he is, so it be not against þ sayd lawes & so may the cases be, that he may bynde himselfe to restitution. S. At this time I wil no further trouble thee in this question.

¶ The xviij. question of the student.

The xx. Chapter. *festum per conditio de pater mat*

I f a man of his meere motion geue landes to Henry Hart and to his heires by indenture vpon a condition that he shal yerely at a certein day pay to John at Style out of the same land a certein rent, and if he doe not, that the it shal be lawfull to the said Jo. at Style to enter &c. if the rent in this case be not paid to John at Style, whether may the sayd John at Style enter into the landes by conspence though hee may not enter by the law. D. May he not enter in this case by the law, with the words of the indenture be that he shal enter. S.

No verely. for there is an ancient maxime in the lawe that no man shall take aduantage in a conditio but he þ is partye or priny to the conditio, and this man is not partye nor prinye where=

may:

partye or prinye

The xx. Chapter.

Wherefore he shal haue none aduantage of it.

D. Though he can haue none aduantage of it as party, yet because it appeareth evidently by intent of the geauer was, that if hee were not paid of the rent that he should haue by land: It seemeth that in conscience he ought to haue it though he can not haue it by the law.

S. In many cases the extent of a party is bound to all intents if it be not grounded according to the law. And therefore if a man make a lease to another for terme of life, & after of his mere motion he confirmeth his estate for terme of life to remaine after his death to an other and to his heires, in this case that remainder is bound in lawe and conscience, for by the law there can no remainder depend vpon no estate, but that the same estat beginneth at the same time that the remainder doth, and in this case the estate began before, and the confirmation enlarged not his estate, nor gaue him no new estate, but if a lease be made to a man for tyme of an other mans life, and after the lessour only of his meere motion confirmeth the lande to his lessee for terme of his owne lyfe, the remainder ouer in fee, this is a good remainder in the lawe and conscience, and so me thinketh the intent of the party shall not be regarded in this case. D. And in the first case that thou hast put, me thinketh though it passe not by way of graunte of that, yet it shal passe, as by the way of remainder of the reuer- sion, for euery deede shalbe taken most strong against the grauntour, and the taking of a deede in this case is an attornment in it selfe.

S.

not out in rent
130.

note

nota

remainder
bound

S. That cannot be, for he in the remainder is not party to the dede & therefore it can not be taken by the way of graunt of the reuerſion, for no graunt can be made but to him y^e is party to y^e dede, except it be by way of remainder, & therefore if a man make a lease for terme of life, & aff^r the lessour graunt to a straunger that y^e tenant for terme of life shall haue the land to hym and to his heires, that graunt is void if it be made onely of his meere motion without recopence. And in likewise if a man make a lease for terme of life, and after graunt the reuerſion to one for terme of life, the remainder ouer en fee, & the tenant attourneth to hym that hath the estate for terme of life onely, entending y^e he onely should haue aduantage of the graunt, his entet is voyd and both that take aduantage thereof, & the attournement shalbe taken good, according to the graunt, and so in this case though the feoffour intended that if the rent were not paid: that y^e straunger should enter, yet because the law geueth him no entre in y^e case, that intent is boide and the same straunger shall neither enter into y^e land by law nor conscience. **D.** What shal then be done with that lande as thou thinkest after the condition broke **S.** I thinke that the feoffour in this case may lawfully reenter, for when the feoffment was made vpon condition that y^e feoffee would pay a rent to a straunger, in those wordes is concluded in the lawe that if the rent were not paid to the straunger that y^e feoffour should reenter for those wordes, bpo conditio imply so much in y^e law though it be not expressed. And

quod non motu

*attourned alight
bond alight on*

*feoffor non
re-:*

The xxj. Chapter.

The xix. question of the Student.

The xxj. Chapter.

A Man maketh a feoffement by dede endented,
& by the same dede it is agreed, that þe feoffee
shal pay to A. B. & to his heires a certeine rent
perely at certeine daies, & that if he pay not the
rent, the it is agreed þe A. B. or his heires shall
enter into þe lād, & after the feoffee paieth not þe
rēt then the question is who ought in cōscience
to haue this lande and rent. W. ere we argue
what conscience wil, let vs knowe first what þe
lawe wil therein. S. I thinke that by the law
neither the feoffour ne yet the sayd A. B. shall
neuer enter into þe land in this case for non pai-
ment of the rent, for there is no reentre in this
case geue to þe feoffour for not painmēt of þe rent
as there is in the case next befoze, & the entre þe
is geuen to þe said A. B. for not painment therof
is boide in the lawe because he is estraunge to
tho

the dede as it appeareth also in the next chapter befoze. And therefore me thinketh that þe greatest doubt in this case is to see to what vse this feoffement shalbe taken.

D. There appeareth in this case as thou haste put it, no consideration ne recompence geuen to the feffour, whereupon any vse may be deriued, and if the case be so in dede, and that the feffour declared neuer his minde therein, to what vse shal it then be taken. S. I thinke it shalbe take to be to the vse of the feffee as long as he paieth the rent, for there is no reason why the feoffee should be busied with payment of the rent ha- uing nothings for his labor, ne it may not con- ueniently be take that the intent of the feoffour was so, except he expessed it, & then it must bee taken he that enteded to recōpence the feffee for the busines that he should haue in the payment ouer, and by the words following his intēt ap- peareth to bee so as mee thinketh, for if the rent were not paid, he would that A. B. should en- ter, & so it seemeth he enteded not to haue any vse himself, & thus me seemeth this case should vary from the common case of vses, that is to say, if a man seysed of lande make a feoffement thereof: and it appeareth not to what vse þe feffement was made, ne it is not vpo any bargain or other recompence, then it shalbee taken to be to the vse of the feoffour, except the contrary can bee proued by some bargayne, or other like, or that his entent at the tyme of the livery of seyson was expessed that it shoulde bee to the vse of the feoffee or of some other, and then it shall

nota

The xxj. Chapter.

shal go according to his entent, but in this case
me thinketh it shalbe take that his entent was
that it should first be to the vse of the feoffee for
the cause before reherfed except the contrarie
can be proued, and so p knowledge of the entent
of the feoffor is p greatest certentie for know-
ledge of the vse in this case as meseemeth: but
when the feffour goeth further and saith that
if the rent be not paide that then the said A. B.
should enter into the land, the it appeareth that
his intent was that the rent shoulde cease, and
p A. B. shoulde enter into the lande, & though
he may not by those words enter into p lande
after the rules of the law, and to haue frehold,
yet those words seeme to be sufficient to proue
that the entent of the feffor was that he should
haue the vse of the land, for sith he had the rent
to his owne vse, and not to the vse of the feof-
four, so it seemeth he shal haue the vse of the feof-
four, that is assigned to him for that payment of the
rent. D. but I am somewhat in doubt whether
he had p rent to his owne vse: for the entent of
the feoffour might bee that hee should pay the
rent for him to some other, or some other vse
might be appointed therof by p feoffour. S. If
such an entent can be proued: then the intent
must be obserued, but we be in the case to sweite
to what vse it shalbe taken if the entent of the
feoffour cannot be proued, and then mee thinketh
it cannot be otherwise take, but that it shalbe to
the vse of him to whom it shoulde bee paide, for
though it bee called a rent, yet it is no rent in
the law, ne in the lawe hee shall neuer haue re-
medy

Nota.

medy for it, though it were assigned to him, and to his heires without condition, neither by distress, by assise, by writ of anuirty nor otherwise, but he shalbe driven to sue in the chancery for his remedy, & then when he sueth in y^e chancery he must surmit y^e he ought to haue it by conscience, and that hee can haue no remedy for it in the lawe. And then, with hee hath no remedy to come to it but by the way of conscience, it semeth it shalbe taken that when hee hath recovered it that he ought to haue in conscience, & that to his owne vse without the contrary can be proued, and if the contrary can be proued, and that y^e intent of the feoffour was that hee should dispose it for him as he should appoint: then hath he the rent in vse to an other vse, and so one vse should be depending vpon another vse, which is sel- dome seene, and shall not be intended till it be proued: & so, with no such matter is here expressed, me thinketh the rent shalbe taken to be to the vse of him that it is paide to, & the lande in likewise that it is appointed to him for not payment of y^e said rent, shalbe also to his vse, how thinkest thou will serue conscience therein.

D. I thinke that as thou takest the lawe, now that conscience (in this case) and the lawe be all one, for the law searcheth the same thing in this case, to know the case that conscience doth, that is to say, the intent of the feoffour, & therefore I would moue thee further in one thing.

S. What is that?

D. That with y^e entet of y^e felloz shalbe so much regarded in this case: why it ought not also to

for sub idem
24 moth

The xxij. Chapter.

to be as much regarded in the case that is in the last chapter next before this, where the words be conditional, & geue the fessor a title to reentre, for me thinketh that though the fessor may in that case reentre for the condition broke, that yet after his entre he shalbe seised of the lande after his entre to the vse of him to whome the land was assigned by y^e said indenture for lache of paiement of the rent, because the intent of the fessor shalbe taken to be so in that case as wel as in this. And I pray thee let me know thy mind what diuersity thou putttest betwene them. S. Thou driest me now to a narrowe diuersitie, but yet I wil aunswere thee therein as wel as I can. D. But first ere thou shewe me that diuersitie: I pray thee shew me howe vles began & why so much land hath ben put in vse in this realme as hath bene. S. I will with good wil say as me thinketh therein.

THowe vles of lande first began, & by what laswe, & the cause why so much land is put in vse.

The xxij. Chapter.

Vses were reserved by a secondary conclusion of the laswe of reason in this maner, when the general custome of property, wherby every man knew his owne good frō his neighbours was brought in among the people: It folowed of reaso that such lands and goodes as a manne had, ought not to be taken from him but by his assent

assent or by order of a law, & the sixth it is so that every man y^e hath lands, hath thereby y^e things in him, that is to say, the possession of the lande which after y^e law of England is called y^e franktenement or the freehold, & the other is authority to take thereby the profits of y^e land, wherefore it foloweth that he y^e hath land, & intendeth to geue only the possession and freehold thereof to an other, and to keepe the profits to himselfe ought in reason and conscience to haue the profits seeinge there is no lawe made to prohibite, but that in conscience such reseruati^{on} may bee made. And when a man maketh a feoffement to an other, & intendeth that he himselfe shal take y^e profits, then the fesse is saide seiled to his vse y^e so enfeiled him, that is to say, to the vse that he shall haue the possession & freehold thereof as in the law, to the intent that the fessor shal take y^e profits, & vnder this maner as I suppose vses of land first began. D. It semeth that the reseru^{ing} of such vse is prohibited by y^e law, for if a man make a feoffement & reserue the profits, or any part of the profits, as grasse, wood, or such o^{ther}, that reseruati^{on} is boide in y^e law, and me thinketh it is all one to say y^e the lawe iudgeth such a thing if it be done to bee boide, & that the lawe prohibiteth that the thing shal not be done. S. Truth it is, that such reseruati^{on} is boide in the law as thou saiest, & that is by reason of a maxime in the law, that willet^h that such reseruati^{on} of part of the same thinge shal be iudged boide in the law, but yet the lawe doth not prohibite that no such reseruati^{on} shal be made,

R. 1.

but

reserued

The xxij. Chapter.

but if it be made, it iudgeth of what effect it shal be, that is to say, that it shalbe void, & so hee y maketh such reueruatiō offēdeth no law therby, ne breaketh no law thereby, & therfore y reseruatiō in cōscience is good, but if it were prohibited by statute y no man should make such reseruatiō, ne that no feffemēt of trust should be made, but that al feffemēts should be to the vse of him to whom possession of the land is geuen: then the reseruatiō of such vles against the statute should be void, because it were against the law, & yet such a statut should not be a statut against realō because such vles were first grōūded, & reserued by y law of reason: but it should pzeuent the law of reason, & should put away y consideration whereupon y law of reason was grōūded before the statute made. And then to y other question, that is to say, why so much land hath ben put in vse, it will be somewhat longe, & peraduenture to some tedious, to thew al y causes particularly, but the very cause why the vse remained to the feffor notwithstandinge his owne feffement oz fine, & sometime notwithstandinge a recovery against him is all vpon one cōsideratiō after the cause and entent of the gift, fine, oz recovery, as aforesaid. W. though realō may serue that vpon a feffement a vse may be reserued to the feffor by the intent of the feffour against the fourme of his gift as thou haste sayd before, yet J. maruaile how such an vse may be reserued against a fine that is one of the highest records that is in the lawe, and is taken in the lawe of so hygh effect that it shoulde make an ende

ende of all strifes, or against a recovery that is ordeined in the law, for the that be wronged to recover their right by: & me thinketh that great inconuenience and hurt may folloſſe when ſuch recozdes may ſo lightly bee auoyded by a ſecret intent, or ble of the parties, & by a nude, & bare auerment, and matter in deede, & ſpeciallꝝ ſith ſuch a matter in deede may bee alleaged, that is not true wherby may riſe great ſtrife betwene the parties, and great confuſion, & vncertainety in the lawe, but neuertheleſſe ſith our intent is not at this time to treate of that matt, I pray thee touch ſhortly ſome of the cauſes why there hath bin ſo many pſons put in eſtate of lāds to the uſe of other as there hath bin, for as I here ſay, fewe men be ſole ſeiſed of their owne land.

S. There hath bin many cauſes thereof, of the which ſome be put aſway by diuers ſtatutes, & ſōe remaine yet, wherfore thou ſhalt vnderſtād that ſome haue put their land in feffemēt ſecretly, to the intent that they that haue right to the lād ſhould not know againſt who to bring their action, & p̄ is ſome what remedied by diuers ſtatutes, that geue actions againſt parnours, & takers of the profits. And ſometime ſuch feoffements of truſt haue bin made to haue mayntenance & bering of their feſſes, which peraduētū were great lords or rulers in the countrey, and therefore to put aſway ſuch maintenaunce: treble damages bee geuen by ſtatute agaynſt them that make ſuch feoffementes for mayntenance. And ſometyme they were made to the uſe of Mortmaine which might then be made without

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simp p̄no
tals
profits*

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out forfeiture though it were prohibited, that y^e frehold might not be geue in mortmain. But y^e is put away by y^e statute of Richard the second. And sometime they were made to defraude the Lordes of wardes, relieves, hariots, and of the landes of their villaines, but those pointes bee put away by diuerse statutes made in the time of king Henry y^e vij. Somtime they were made to auoide executions bp^o statute Stapl^e, statute marchant, & recognisance, & remedy is provided for that, that a man shal haue executi^o of al such lads as any person is seised of to the vse of him that is so bound at the time of execution sued in y^e xix. yeare of H. y^e 7. And yet remaine seffements fines, & recoueries in vse for many other causes, in maner as many as there did befoze the saide estatute. And one cause why they bee yet thus vsed, is to put away tenauncy by the curtesy & titles of dower, An other cause is for that lads in vse shal not be put in execution bp^o a statute Staple, statute marchant, nor recognisance, but such as be in the hands of the recognisor at the time of the execution sued. And sometime lands be put in vse that they should not be put in execution bp^o a writ of *Extendi facias ad valenciam*. And sometime such vles be made y^e hee to whose vse &c. may declare his wil thereon, & sometime for suerty of diuers couenants in indentures of marriage & other bargaines, and these two last articles be the chiefe and principall causes why so much land is put in vse. Also lands in vse be no assets neither in a *formedon*, nor in an action of debt against the heire: ne they shal not bee put in

mayn.

2. 2.

*Nota m^o p^oat
is down
by p^oa:*

Nota:

in execution by an Elegit sued vpon a recovery
as some men say, & these be the very chiefe cau-
ses as I nowe remembre why so much lande
standeth in vse as there doeth, & al the said vses
be reserued by þ intent of the parties vnderstād
oz agreed betwene thē, & that many times dy-
rectly against the words of feoffement, fine, oz
recovery, & that is done by the law of reason as
is aforesaid. D. May not an vse bee assigned to
a stranger as wel as to be reserued to the feof-
four if the feoffour so appointed it vpon his fe-
offement? S. Yes as well, and in lyke wyse to
the feoffee & that vpon a free gift wout any bar-
gain oz recompence if the feoffour so will. D.
What if no feoffement bee made but that a man
graunt to his feoffee þ frō thence forth he shall
hād seised to his owne vse, is not þ vse charged
though there be no recompence. S. I thinke
yes, for there was an vse in Elle before the
gift which hee may as lawfully geue away as
he might the lande if he had it in possession. D.
And what if a man being seised of lande in fee
graunt to another of his mere motiō wout bar-
gaine oz recompence that he frō thenceforth shal-
be seised to the vse of the other, is not that grāt
good? S. I suppose þ it is not good, for as I
take the law: a man cannot comence an vse but
by livery of seyson oz vpon a bargaine oz some
other recompence. D. I hold me contēted with
that thou hast said in this Chap. for this time,
& I pray thee shewe me what dyuersitie thou
puttest betwene those ij. cases þ thou hast be-
fore rehearsed in the xx. Chap. and in the xxi.

For after: got enter.

99

The xxiiij. Chapter.

Chapter of this present booke. S. I wil with good wil.

The diuersitie betwene two cases here after follow, whereof one is put in the xx. chap. & the other in the xxi. Chapter of this present booke.

The xxiij. Chapter.

The first case of the said two cases is this. A man maketh a feoffement by deede indented bypon a condition that the feoffee shal pay certeine rēt perchy to a straunger &c. & if he pay it not: y it shalbe lawfull to y straüger to ent into y lād. In this case I said before in y xx. chap. y the straüger might not enter, because y he was not priuy vnto y conditiō. But I said that in that case y feoffour might lawfully reentre by y first wordes of y endēture because they imply a cōditiō in y law, & y the other wordes (y is to say) that y straüger should ent, be void in lawe & consciēce. And therfore I said farther y whē the feoffour had reentred that he was seyled of the lande to his owne vble & not to the vble of the straüger, though his entent at the makinge of the feffement were that the straunger after his entre shoulde haue had the lād to hys owne vble if he might haue entred by y law. And y cause why I thinke that the feoffour was seyled in that case to his owne vble I shall shew thee afterwarde: The secōd case is this, a man maketh a feff-

Make

a feoffment in fee, & it is agreed vpon the feoffment that the feoffee shall pay a yerely rent to a stranger, & if he pay it not, that then y^e stranger shall enter into the lad. In this case I said as it appereth in the said xxj. Chap. y^e if the feoffee paid not the rent: that the stranger should haue the vse of the land though he may not by the rules of the law enter into the lad, & the diuersity betwene the cases me thinketh to be this. In the first case it appeareth as I haue sayd before in the said xx. chap. that y^e feoffour might lawfully reent by the law for not paymēt of rent, & then when he entred according: he by the entrie auoided the first liuery of seysō, in so much, that after the reent he was seysed of y^e lad of like estate as he was before the feoffment. And so remaineth nothing, wherupon y^e stranger might ground his vse, but only the bare graunt or entent of the feoffour when he gaue the lad to y^e feoffee vpon condition that he should pay y^e rent to the stranger, & if not, that it should be lawful to the stranger to enter: for the feoffment is auoided by the reētre of the fessor as I haue said before, & as I said in the last Chapter, as I suppose a nude or bare graunt of hym that is seysed of land is not sufficient to beginne an vse vpon. D. A bare graunt may chaunge an vse as thou thy selfe agreest in the last chapter, why then may not an vse as well beginne vpon a bare graunt. S. When an vse is in esse he that hath the vse may of his mere motion geue it away if he wil without recōpence, as he might the lande if he had it in possession but

Note y^e diuersity of the 2 cases for mentioned

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of b m apper without recompent

The xxiiij. Chapter.

but I take it for a ground \bar{p} he cannot so begin
an vse without a livery of seyson or upon a re-
cōpēce or bargaine, & that there is such a ground
in the law \bar{p} it may not so beginne it appeareth
thus it hath be alway holdē for law \bar{p} if a man
make a dede of feoffemēt to another & deliuer \bar{p}
dede to him as his dede, that in that case hee to
whom the dede is deliuered hath no title med-
ling to the land afore livery of seyson be made
to him, but onely that he may enter & occupy \bar{p}
land at the wil of \bar{p} feoffour, & there is no booke
sayth that \bar{p} feoffour in that case is seised ther-
of before livery to the vse of the feoffee. And in
likewise if a man make a dede of feoffement of
two acres of land that lie in two shires inten-
ding to geue them to the feoffee, & maketh lue-
ry of seiso in the one shire & not in the other, in
this case it is cōmonly holden in bookes that \bar{p}
dede is void to the acre wher no livery is made
except it lie win \bar{p} view, saue only \bar{p} he may eter
& occupy at wil as is aforesaide, & there is no
booke that saieth that the feoffee shoulde haue \bar{p}
vse of the other acre, for if an vse passed therby
then were not the dede void to al intents, & yet
it appeareth by the words of the dede \bar{p} the fe-
offour gaue \bar{p} lads to the feoffee, but for lacke of
livery of seyson the gift was void, & so me thin-
keth it is here, wout livery of seiso be made ac-
cording, but in the secōd case of the said ij. cases
the feoffee may not reenter for non paymt of the
rent & so the first livery of seyson continueth &
standeth in effect, and therupō the first vse may
well beginne and take effect in the Stranger:
of

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*olunt
not
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*And word on 2
of*

*note live-
ry on 2
and*

of the land when the rēt is not paid vnto him according to the first agreēmēt. And so me thinketh that in the first case the vse is determined because the livery of sealon whereupon it commenced is determined, and that in the second case the vse of the lande taketh effect in the straunger, for not payment of the rent by the graunt made at the first livery which yet continueth in his effect, & this me thinketh is y^e diuersitie betwene y^e cases. D. Yet notwithstanding the reason that thou hast made, me thinketh y^e if a mā seised of lāds maketh a gift thereof by a nude promise wout any livery of sealon, or recompēce to him made: & graūt that he shalbee seised to hys vse that though the promise be void in the law, that yet neuertheles it must hold & stand good in conscience & by the law of reason, for one rule of the law of reason is, that we may doe nothing against the trouth, and sith the trouth is y^e the owner of the ground hath graunted that hee shal be seised to the vse of the other: that graūt must nedes stand in effect or els there is no trouth in the grauntour. S. It is not againste the trouth of the grauntour in this case though by y^e graunt he be not seised to the vse of the other but it prometh that he hath graunted, that the lawe wil not warrant him to graūt, wherefore his graunt is boide. But if the grauntour had gone farther and said that he would also suffer the other to take the profits of the lands wth out let or other interruption, or that he would make hī estate in y^e lād whē he should be required, then I thinke in those cases he were bound

in

diuersified
y^e 2 cases

The xxiiij. Chapter.

in conscience by that rule of the law of reason þ
thou hast remembred to perfourme thē, if he intē-
ded to be boundē by his promise for els he shoulde
go against his owne trowth & against his owne
promise. But yet it shal make no vse in that case,
nor he to whom the promise is made shall have
no actiō in the law bpō that promise, although
it be not perfourmed, for it is called in the lawe
a nude or a naked promise. And thus me thin-
keth that in the first case of the said two cases þ
graunt is now auoided in the law by the reentre
of the fessour, & that the fessor is not bounden by
his graunt neither in law nor conscience, but in
the secōd case he is bound so that the vse passeth
fro him as I haue said before. D. I holde me
cōtēt with thy cōcept for this time, but I pray
the shew me somewhat more at large what is
taken for a nude contract or a naked promise in
the lawes of England, & where an action may
lye thereupon & where not. S. I will w good
wil say as me thinketh therein.

What is a nude contracte or naked promise
after the lawes of England, and
whether any action may
lye thereupon.

The xxliij. Chapter.

First it is to be vnderstand that contracts be
grounded vpon a custome of the realme & by
the law that is called (Ius gentium) and not dy-
rectly by the law of reason, for when all things
were

The xxiiij. Chapter. 102

Contracte.

were in commō: it neded not to haue contracts,
but after property was brought in, they were
right expedient to al people, so þ a man might
haue of his neighbour that hee had not of hys
owne, & that could not be lawfully but by hys
gift, by way of lending, concord, or by soe lease,
bargaine or sale, & such bargains & sale bee cal-
led contracts & be made by assent of the parties
vpon agreement betwene them, of goods or lāds
for money or for other recompēce, but of mony,
vniel, for money vniel is no contract. Also a co-
corde is properly vpon an agreement betwene
the parties in diuers articles there, some rising
on the one part & soe on the other, as if John at
Stile letteth a chāber to Henry Hart, & it is fur-
ther agreed betwene thē that þ said Henry Hart
shall goe to brod w the saied John at S. & the
said Henry Hart to pay for the chāber & bordig
a certein sūme &c. this is pperly called a cōcord,
but it is also a cōtract & a good action lieth vp-
pō it, howbeit it is not much argued in þ laʷs
of England, what diuersitie is betwene a con-
tract, a cōcord, a pmise, a gift, a lone, or a pledg,
a bargaine, a couenant, or such other, for þ intēt
of the laʷe is to haue the effecte of þ matter ar-
gued and not the termes, and a nude cōtract ys
where a man maketh a bargaine, or a sale of his
goodes or landes wthout any recompence ap-
pointed for it. As if I say to another I sell
thee al my lande or all my goods and nothinge
is assigned that the other shall geue or pay for
it, that is a nude contract, and as I take it, it
is boide in the laʷe and conscience, and a nude
or

what is a
contracte not

what is a
contracte

nude contract

The xxiiij. Chapter.

or naked promise is where a man promiseth ano-
 ther to geue him certein money at such a day or
 to buyld him an house, or to do him such certain
 seruice, & nothing is assigned for the money, for
 y^e building, nor for the seruice, these be called na-
 ked promises, because there is nothing assigned
 why they should be made, & I think no actio li-
 eth in those cases though they be not pformed.
 Also if I promise to another to kepe him such
 certaine goodes safely to such a time, & after I
 refuse to take them, there lieth no action against
 me for it, but if I take the & after they be lost or
 epaired through my negligēt keepinge, there an
 action lieth. D. But what opinion holde they
 that be learned in the laswe of England in such
 promises that be called naked or nude promises?
 whether doe they hold that they y^e make y^e pro-
 mise be bound in conscience to perfourme their
 promise, though they canot be compelled therto
 by the lawe not? S. The bookes of the laswe of
 England treat litle thereof, for it is left to the
 determination of Doctors, & therefore I pray
 thee shew me soe what now of thy mind there-
 in, & then I shal shewe thee therein somewhat
 of the minds of diuers that be learned in y^e lawe
 of the realme. D. To declare y^e matter plainly
 after the saying of Doctors: it would aske a
 long time, & therfore I wil touch it briezely to
 geue the occasiō to desire to heare more therein
 herafter. First thou shalt vnderstā that there
 is a promise y^e is called an aduow, & y^e is a pro-
 mise made to god, and hee that doth make such
 a vow vpon a deliberate minde entendinge to
 per-

red promise.

*in l. action
gift in row
case*

L

an aduow

performe, it is bound in conscience to do it though
it be onely made in the hart without pronoun-
cing of wordes, and of other promises made to
man vpon a certaine consideration if the promise
be not against y^e law. As if A promise to geue B.
xx. pound because he hath made him such a house,
or hath lent him such a thing, or such other like:
I thinke him bound to keepe his promise. But if
his promise bee so naked y^e there is no maner of
consideration why it shoulde bee made, then I
thinke him not bound to performe it, for it is to
suppose y^e there was some errour in the making
of the promise, but if such a promise bee made to
an vniuersity, to a city, to the church, to y^e cler-
gy, or to poore men of such a place, & to y^e honoz
of God, or such other cause like, as for mainte-
nance of learning, of y^e comon welth, of the ser-
uice of god, or in reliefe of pouerty or such other,
then I thinke y^e hee is bounden in conscience to
performe it, though there be no consideration of
worldly profit, that the grauntoz hath had or in-
tendeth to haue for it, and in al such promises it
must be vnderstand that hee that made the pro-
mise intended to be bound by his promise, for els
commonly after all Doctours, he is not bound,
vnlesse he were bound to it before his promise.
As if a man promise to geue his father a gown
that hath neede of it, to keepe him fro cold, & yet
thinketh not to geue it him, neuerthelesse he is
bounde to geue it for hee was bounde thereto
before. And after some Doctours a man may
bee excused of such a promise in conscience by
casualty that commeth after the promise if it be
so

note

bound in conscience

The xxiiij. Chapter.

So that if he had knowen of the casualty at the making of the promise he should not haue made it. And also such promises if they shal bind, they must bee honest, lawefull, and possible, and else, they are not to bee holden in conscience though there be a cause &c. And if the promise bee good and with a cause though no worldly profit shal grow thereby to him that maketh the promise but only a spirituall profit, as in the tale before rehearsed of a promise made to an vniuersity, to a City, to y church, or such other, & with a cause as to the honor of god, other there are that most commonly hold, that an action vpon those promises lyeth in the lawe Canon. **S.** Whether dost thou meane in such promise made to an vniuersity, to a City, or to such other as thou hast rehearsed before, & with a cause as to the honor of god, or such other, that the party shall bee bounde by his promise, if he intended not to be bounden thereby, y^e, or nay? **D.** I think nay, no more the vpon promises made vnto comon persons. **S.** And then me thinketh clerely that no action can lie against him vpon such promises, for it is secret in his owne conscience, whether hee enteded for to be bound, or nay. And of the intent inward in y hart: mans lawe cannot iudge, & that is one of y causes why y lawe of god is necessary (that is to say) to iudge inward things, & if an actio should lie in y case in y lawe Canon, then should y lawe Canon iudge vpon the inward intent of the hart, which cannot be as me seemeth. And therefore all diuers that be learned in the lawes of the realme, al promises shalbe taken in
this

nota

*action qd
in la ley
common*

this maner, that is to say, If hee to whom the promise is made: haue a charge by reason of the promise which he hath also perfourmed: then in that case he shall haue an action for that thinge that was promised, though hee that made the promise haue no worldly profit by it. As if a man say to another, heale such a poore man of his disease, or make an high way, and I shall geue thee thus much, and if hee doe it, I thinke an action lieth at the comon lawe. And mozeouer though the thing that he shal do bee al spirituall, yet if he perfourme it, I thinke an action lieth at the comon lawe. As if a man say to another, fast for me al the next Lent & I shall geue thee xx. pound, and he perfourmeth it, I thinke an action lieth at the comon lawe. And in like wise, if a man say to another, marry my daughter, and I will geue thee xx. pound. Upon this promise an action lieth if he marry his daughter, and in this case he cannot discharge the promise though he thought not to be bound thereby, for it is a good contract, and hee may haue *Quid pro quo*, that is to say, the preferment of his daughter for his money. But in those promises made to an Uniuersity, or such other, as thou haste remembred before, with such causes as thou haste shewed (that is to say) to the honour of God, or to the increase of learninge, or such other like, where the party to whom y promise was made is bounde to no newe charge, by reason of the promise made to him, but as hee was bounde to before, there they thinke that no action lieth agaynst him though hee perfourme not his

action gift

action upon promise

note

note

The xxiiij. Chapter.

his promise, for it is no contract, & so his owne conscience must be his iudge whether he intended to be bound by this promise or not. And if he intended it not: then he offended for his dissimulation only, but if he intended to be bound, then if he performe it not: vntruth is in him, & he pro-ueth himself to be a lier, which is prohibited, as wel by law of god, as by law of reason, & furthermore many haue learned in lawe of England, hold that a man is as much bounden in conscience by a promise made to a common person if he intended to be bound by his promise, as hee is in the other cases that thou hast remembred of a promise made to the church, or to the clergy, or such other, for they say that as much vntruth is in the breaking of the one as of the other, & they say that the vntruth is more to be punished then the person to whom the promises be made. D. What what hold they if the promise be made for a thing past, as I promise thee xl. pound for that thou hast builded me such a house, lyeth an action there? S. They suppose nay, but he shall be bound in conscience to performe it after his intent as is before said. D. and if a man promise to geue another xl. pound in recompence for such a trespass that he hath don him, lieth an action there? S. I suppose nay, & the cause is for that such promises be not perfect contracts, for a contract is properly where a man for his money shall haue by assent of the other party, certaine goods, or some other profit at the time of the contract or after, but if the thing be promised for a cause that is past by way of a recompence, then it is rather an accord then a con-

ing 272. nota

promise is past

contract, but then the law is, that byon such accorde the thing that is promised in recompence must be paide, or deliuered in hand, for bypon an accord there lieth no action. D. But in the case of trespass whether hold they that he be bounde by his promise though hee entended not to be bound thereby. S. they thinke nay, no more then in the other cases that he put before. D. In the other cases he was not bound to that he promised but onely by his promise, but in this case of trespass, he was bound in conscience before y promise to make recompence for the trespass, and therefore it seemeth that he is bound in conscience to keepe his promise though hee entended not to be bounden thereby.

S. Though he were bounde before the promise to make recompence for his trespass, yet he was not bounden to no summe in certaine but by his promise, and because that the summe may be to much, or to litle, and not egall to the trespass, & that the party to whom the trespass was done notwithstanding y promise is at liberty to take his actio of trespass if he will, therefore they holde that hee may be his owne iudge in conscience whether he enteded to be bounde by his promise or not, as he may in other cases, but if it were of a debt, then they hold that hee is bounden to performe his promise in conscience. D. What if in the case of trespass hee affirmeth his promise with an othe. S. Then they holde that hee is bounde to performe it for sauinge of his othe though he entended not to be bounden, but if hee intended to be bound by his promise, then they

D. i.

say

*bound in
conscience*

The xxiiij. Chapter.

say that an othe needeth not, but to enforce the promise, for they say he breaketh by lawe of reason, which is by we may doe nothing against the truth, as wel whē he breaketh his promise that he thought in his owne hart to bee bounde by, as he doth when hee breaketh his othe, though the offence be not so great by reason of the periury. Moreover to that thou saiest that vppon such promises as thou haste rehearsed before, shal lye an action after the lawe Canon, verely as to that in this realme there can no action lie thereon in the spiritual court, if the promise be of a temporall thinge, for a prohibition, or a pre-
prohibition
by maner
munire facias should lye in that case. D. That is maruaile sith there can no action lye thereon in the kings court, as thou saist thy selfe. S. that maketh no matter, for though there lye no action in the kings court, against executours vpon a simple contract, yet if they be sued in that case for the debt in the spirituall court, a prohibition lieth. And in like wise if a manne swage his lawe vntreuly in an action of debt vppon a contract in the kings court, yet he shall not be sued for the periury in the spirituall courte, and yet no remedy lyeth for the periury in the kings court, for the prohibition lieth not only where a man is sued in the spirituall courte of such thinges, as by party may haue his remedy in the kings court: but also where the spiritual court holdeth plee in such case, where they by by kings prerogative, and by the auncient custome of the realme ought none to holde. D. I will take aduise ment vppon that thou haste saide in this matter

The xxv. Chapter. 106

matter till an other time, and I pray thee now
proceede to an other question.

¶ The xx. question of the Student.

¶ The xxv. Chapter.

A Man hath two sonnes, one borne before es-
pousels, and the other after espousels, and
the father by his wil bequetheth to his sonne &
heire all his goods, which of these two sonnes
shal haue the goods in conscience. Q. As I said
in our first dialogue in latin, the last chapt. the
doubt of this case dependeth not in y knowing
what conscience wil it y case, but rather in kno-
wing which of the sonnes shalbe iudged heire,
(y is to say) whether hee shalbe taken for heire
that is heire by the spiritual laswe, or he that is
heire by the lawe of the Realme, or els that it
shalbe iudged for him that the father tooke for
heire? S. As to that point, admit the fathers
minde not to be knowne, or els that his minde
was that hee shoulde bee taken for heire, that
should be iudged for heire by that laswe, that in
this case it ought to be iudged by. And then I
pray thee shew me thy minde therin, for though
the question be not directly depending vpon the
point to see what conscience will in this case, yet
it is right expediēt for the wel ordyng of consci-
ēce y it be knowē after what lasw it shalbe iud-
ged, for if it ought to be iudged after the tēpo-
ral lasw who shoulde be heire, thē it were against
consciēce, if the iudges in y spiritual laswe should

nd. y.

iudge

*note this
case and
question.*

The xxv. Chapter.

iudge him for heire þ is heire by þ spiritual lasw
 & I think they should be bound to reſtitutio ther
 by, & therefore I pray thee ſheſw me thine opini-
 on, after what laswe it ſhalbe iudged. D. Wee
 thinketh that in this caſe it ſhalbe iudged after
 the laswe of the Church, for it appeareth þ the
 bequeſt is of goods, and therefore if any ſuyte
 ſhalbe taken vppon the execution of the ſwill for
 the bequeſt, it muſt be taken in þ ſpiritual court
 and whē it is depending in the ſpiritual court,
 me thinketh it muſt be iudged after the ſpiritu-
 all laswe, for of the temporall lasw they haue no
 knowledg, nor they are not bound to know it
 as me thinketh, & moze ſtrōger not to iudge aft
 it. But if the bequeſt had ben of a chattell real,
 as of a leaſe for terme of yeres, or of a ſwarde, or
 ſuch other, then the matter ſhould haue come in
 debate in the kings court, and then I think the
 iudges there ſhould iudge after the laswe of the
 realme, and that is, þ the yonger brother is heir
 and ſo me thinketh the diuerſity of the courtes
 ſhal make the diuerſity of the iudgment. S. Of
 that might folloſw a great inconuenience as me
 ſemeth, for it might be ſuch a caſe þ both chat-
 tels real, & chattels perſonel were in the ſwill, &
 then after thyne opinion, the one ſonne ſhoulde
 haue the chattels perſonal, and the other ſonne
 the chattels real, and it cannot be conuenient-
 ly taken as mee thinketh, but that the fathers
 ſwill was that the one ſonne ſhould haue al, and
 not to be deuided. Therefore me thinketh that
 he ſhalbee iudged for heire that is heire by the
 comon lasw. And þ the iudges ſpiritual in this
 caſe

*after þ
 law of
 ſpirit*

*Or bat
 in yd king
 Court*

*gattell
 to yd ſonne
 at yd comon law*

case be bound to take notice what the common law is, for with the thinges that be in variance be temporal, that is to say, the goods of the father, it is reason that the right of them in this Realme shalbe determined by the lawe of the realme. D. Howse may that be, for the iudges spiritual knowe not the lawe of the realme, ne they cannot knowe it as to the most part of it for much part of the lawe is in such speache that few men haue knowledge of it and there is no meanes ne familiaritie of study betwene they that learne the said lawes for they be learned in seuerall places and after diuers waies, and after diuers maners of teachings, & in diuers speeches and commonly the one of them haue none of the bookes of the other, and to bind the spiritual iudges to geue iudgement after the lawe they know not, ne that they cannot come to the knowledge of it, seemeth not reasonable.

S. They must doe therein as the kinges iudges must do when any matter cometh before them that ought to be iudged after the spiritual lawe, whereof I put diuers cases in our first dialogue in English the viij. chapter, that is to say, they must eyther take knowledge of it by their owne studye, or els they must enquire of them that be learned in the lawe of the church, what the law is, and in likewise must they doe. But it is to doubt that some of them would be loth to aske any such question in such case or to confesse that they are bound to geue their iudgement after the temporal law, & surely they may lightly offend their conscience. D.

The xxv. Chapter.

I suppose that some be of opinion that they are not bound to knowe the lawe of the Realme, & verely to my remembraunce I haue not heard that iudges of the spiritual lawe are bounde to knowe the lawe of the realme.

S. And I suppose that they are not onely bounden to knowe the lawe of the realme, or to doe that in them is to knowe it, when y^e knoweledge of it openeth the right of the matter that dependeth before them, but that they bee also bounden to knowe where and in what case they ought to iudge after it, for in such cases they must take the kinges lawe as the lawe spiritual to that point, and are bounden in conscience to followe it as it may appeare by dyuers cases whereof one is this. Two iointenauntes be of goodes, and the one of them by his last will bequeetheth all hys part to a straunger and maketh the other iointenant hys executor, and dyeth, if he to whom the bequest is made, sue the other iointenant, vpon the legacie as executor, &c. vpon this matter thewed the iudges of the spiritual lawe are bounden to iudge the will to be boide, because it is boide by the lawe of the realme, whereby the iointenant hath ryght to the whole goodes by the title of the suruiuor, and is iudged to haue the goodes as by the first gifte which is before the title of y^e will, & must therfore haue preferment as the eldest title, and if the iudges of the spiritual court, iudge otherwise, they are bound to restitution, & by like reason the executors of a man that is outlawed at y^e time of his death may discharge theselues

in the spiritual court of the performing of legacies because they be chargeable to þ king, & yet there is no such law of btlagarie in þ spirituall lawe. D. By occasion of that thou hast layed before I would aske of thee this question. If a pson of a church alien a portion of dismes accordinge as the spiritual law hath ordained, is not þ alienation sufficient though it haue not þ solemnities of the temporal lawe? S. I am in doubt therein if the portiõ be vnder þ fourth part of the value of the church, but if it be to the value of the iiii. part of the church or aboue, it is not sufficient, and therefore was the writ of right of dismes ordained, and if in a writ of right of dismes it be iudged in the kings court for the patron of the successor of him that alieneth, because the alienation was not made according to the common law, then the iudges of the spirituall lawe are bounden to geue their iudgement accordinge to the iudgement geuen in the kinges court. And in likewise if a person of a church agree to take a pension for the tithe of a mille, if the pension be to the fourth part of the value of the church or aboue, the it must be aliened after the solemnities of the kinges lawes, as lands and tenements must, or els the patron of the successor of him that alieneth may bringe a writ of right of dysmes and recover in the kinges court, and then the iudges of the spiritual court are bounden to geue iudgement in the spiritual courtes accordingly as is aforesaid. D.

I haue heard say þ a writ of right of dismes is
D. iiii. geuen

see de pleg
fargable
to y king

f r. b 30
right of dismes

Judges of
spiritual
lawe
bound to
give iudg-
ment af-
ter tempo-
rall lawe

The xxv. Chapter.

gene by the statute of Westminster the seconde
& that speaketh onely of dismes and not of pen-
sion. S. where a Parson of a Church is wrong-
fully deforced of his dismes & is let by an In-
dicavit to ake his dismes in p spiritual court,
then this patron may have a writ of ryght of
dismes by p stat that thou speakest of, for there
lay none at the common law, for the persō had
their good right though he were let by the In-
dicavit to sue for his right. But whē p person
had no remedy at the spirituall lawe, there a
writ of ryght of dismes lay for the patron by p
common lawe, as well of pentrons as of dys-
mes, and some lay p in such a case it lay of lesse
then of the fourth part by the common law, but
that I passe over. And the reason why it lay
at p comon lawe if the dismes or pensions were
aboue the fourth part &c. was this by the spi-
rituall lawe the alienation of the person wyth
assent of the Bishop and of the Chapter shall
barre the successour wythout assent of the pa-
tron, and so the patron might lese his patro-
nage and hee not assenting thereto: for his en-
cumbent might have no remedy but in the spy-
ritual court, and there he was barred, wherfore
the patron in p case shall have hys remedye by
the common law where the assent of the ordy-
nary and Chapter wythout the patron shall
not serue as it is said before. But where p en-
cumbent had good right by the spirituall lawe,
there lay no remedy for the patron by p commō
law though the incumbent were let by an In-
dicavit, & for p cause was p saied statute made
and

and it lieth as wel by the equytie for offerings and pensions as for diuines. Then further I would thinke that where the spirituall Court may holde plea of a temporall thinge that they must iudge after the temporall lawe, & that ignorance shal not excule them in that case. for by takinge of their office they haue bound theselues to haue knowledge of as much as belongeth to their offyce, as al iudges be, spiritual and temporall. But if it were in argument in this case whether the eldest sone might be a priest because he is a bastard in the temporall lawe, that should be iudged after the spiritual lawe for the matter is spiritual.

D. Yet notwithstanding al the reasons that thou hast made, I cannot see howe the Judges of the spirituall lawe, shall bee compelled to take notice of the temporall lawe, seeing that y^e most part of it is in y^e frenche tongue, for yt were harde that euery spirituall iudge should be compelled to learne the tongue. But if the lawe of y^e realme were set in such order that they y^e entred to study y^e lawe Canon might first haue a sight of y^e lawe of the Realme, as they haue nowe of the lawe Ciuil, and that some booke and treatises were made of cases of conscience concerning these two lawes as there be nowe concerning the lawe Ciuil and the lawe Cannon, I would asseet y^e it were right expedient, & then reason myght serue the better that they should be compelled to take notice of the lawe of the realme as they be nowe bounden in such countries as the lawe Ciuil is vied to take notice of that lawe. S.

Me

The xxvj. Chapter.

He thinketh thine opinion is right good and reasonable, but till such an order be taken they are bound as I suppose to enquire of them that be learned in the commō law what the lawe is, & so to geue their iudgement accoꝝdinge, if they wil kepe themselves frō offence of conscience, and for as much as thou hast well satisfied my minde in al these questions before: I pray thee now that I may somewhat fele thy minde in diuers articles that be wꝛitten in diuers booke for the ordering of conscience vpon the law canon and ciuill, for me thinketh that there be diuers conclusions put in diuers booke as in the summes called Summa Angelica, & Summa Rosella, & diuers other, for the good order of conscience that be against the law of this Realme and rather blinde conscience, then to geue any lyght vnto it. D.

I pray thee shewe me some of those cases. S.
I wil with good will.

Whether an Abbot may with conscience present to an aduocaton of a Church þe belongeth to the house, without assent of the Couent.

The xxvj. Chapter.

I appeareth in the Chapter. Et agnoscutur de his que sunt a prelati, the which Chapter is recited in the summe called Summa Angelica in the title Abbas, the xxvj. article, that he may not without any custome or any special priuiledge

ledge to helpe therein. **S.** Trough it is that there is such a decretale, but they that be learned in the laswe of Englande hold the decretale bindeth not in this realme, and this is the cause why they doe hold that oppinion. By the laswe of the realme the whole disposition of the lads and goodes of the abbey is the Abbotes onely for the time that he is abbot, and not in the couent, for they be but as dead persōs in the lasw, and therefore the abbot shall sue and bee sued onely without the couent, doe homage, fealtie, atturue, make leases, and present to aduowōs onely in his owne name, & they say farther that this authozitie cannot be taken from him, but by the lasw of the realme, & so they say that the makers of the decretale exceded their power. Wherefore they say it is not to be holden in cōscience, no more then if a decreē were made that a lease for terme of yerēs or at wil made by the Abbot without the couēt should be immediatly boide, and so they thinke that the abbot may in this case present in his owne name wout offence of cōsciēce, because the said decretale holdeth not in this Realme. **D.** But many be of opinion that no man hath authozitie to present in right and conscience to any benefice w cure but the Pope, or that hee hath his authozitye therein deriued frō the Pope, for they say that for asmuch as the Pope is the bycar generall vnder god, and hath the charge of the soules of al people that be in y flocke of christles church: it is reason that sith he cannot minister to all, he doe that is necessary to al the people for their soules

*smaller
may ppe*

The xxvj. Chapter.

soules health in his owne person that he shall assigne deputies for his discharge in þ behalfe. And because patrons clayme to present to Churches in this Realme by their owne right without title deriued from the Pope, they say that they vsurpe vpon the Popes authoritie, and therefore they cōclude that though the Abbot haue title by the laswe of the realme to present in this case in his owne name, that yet because that title is against the Popes prerogative that þ title, ne yet the laswe of the Realme that mainteineth that title holdeth not in cōscience. And they say also that it belongeth to the law cānon to determyne the right presentment of benefices, for it is a thing spiritual and belongeth to the spiritual iurisdiction, as the deprivation from a benefice doth, and so they say the said decretall bindeth in conscience though in the laswe of the Realme it bindeth not. **S.** As to the first consideratyon I woulde right well agree that if the patrones of Churches in this Realme claimed, to put incumbentes into such churches as should fall void of their patronage without presenting them to the Bishop, or yf they claimed that the bishop should admit such encumbent as they should present without any examinatio to be made of his ability in that behalfe, that that claime were against reaso & cōscience for the cause that thou hast rehearsed: but for as much as the patrones in this Realme claime no moze but to present their encumbets to the Byschoppe, and then the Bishop to examine the abilitie of the incumbent, & if he finde him

The xxvj. Chapter. III

him by the examinatioⁿ not able to haue cure of soule, he then to refuse him, & the patro to present another that shalbe able, & if he be able the bishop to admit him, institute him, & inducte him, I think y^e this claime & their presentmets thereupon stand with good reason and conscience. And as to the seconde consideration it is holden in the lawes of the realme y^e the right of presentment to a Church, is a temporall enheritaunce, & shal discede by course of enheritaunce from heire to heire as lands & tenements shal, and shalbe taken as an assets as landes and tenements bee, and for the tryall of the ryght of patronages bee ordeined in the lawe diuers actions for them y^e be sworged in that behalfe, as writs of right of aduowson, assises of darraigne presentment, Quare impedit, and dyuerse other which alway without time of minde haue bene pleded in the kings courtes, as thinges perteyning to his crowne and roial dignity, and therefore they say that in this case his lawes ought to bee obeyed in lawe and conscience.

D. If it come in variaunce whether hee that is so presented be able or not able, by whom shall the ability bee tryed? S. If the ordinary bee not party to the action, it shalbe tried by the ordinary, and if hee be party it shalbe tried by the metropolitane. D. When the law is more reasonable in that point then I thought it had ben, but in the other point I wil take aduise^ment in it til another time, & I pray thee shewe me thy minde in this point, if an Abbot name his couet with him in his presentation, doth that make y^e pre=

apptc, aduowson

Nota

nota

*Irishland abbot of Andra
in Henry 3. 20. 21.*

The xxvj. Chapter.

presentation boide in the law, or is the presentation good that not with standing :

I think it is not boide therefore, but by naming of them is boide and a thing more then nedeth, for if the abbot be disturbed hee must bringe his action in his owne name without the couent.

D. Then I perceiue well that it is not prohibited in the law of Englad, but that the abbot may name the couent in his presentation with him, and also take their assent whom hee shall present if he will, and then I holde it the surest way, that he so do, for in so doinge hee shall not offend neyther in lawe, nor conscience. S. To take the assent of the couent whom he shall present, and to name them also in his presentation knowing that hee may doe otherwise, bothe in lawe, and conscience if he wil, is no offence. but if he take their assent, or name them with him in the presentation, thinking that he is so bounde to do in law and conscience, lettynge a conscience where none is, and regardeth not the lawe of the Realme, that will discharge his conscience in this behalfe, if he wil so that he present an able manne as hee may doe without their assent, there is an errour, and offence of conscience in the abbot. And in likewise if the abbot present in his owne name, and therefore the couent saith that hee offendeth conscience, in that he obserueth not the lawe of the church, for that hee taketh not their assent, then they offend in iudging him to offende, that offendeth not. And therefore the sure way is in this case to iudge both the said lawes of such effect as they bee, and

*error
of offence*

The xxvij. Chapter. 112

and not to let an offence of conscience by breaking of the said decree, which standeth not in effect in this behalfe within this realme.

¶ If a man finde beastes in his grounde doing hurt, whether may he by his owne authority take them, and keepe them til he be satisfied for the hurt.

¶ The xxvij. Chapt.

This Question is made in the Summe called Summa Rosella, in the title of restitution (that is to say) restitucio xij. the ix. article, and there it is answered that he may not take them for to holde them as a pledge til hee be satisfied for the hurt: but that hee may take them and keepe them til he know who oweth the, that hee may thereby learne against whom to haue his remedy. Is not the law of the realme so in likewise? S. No verely, for by the lawe of the Realme he that in that case hath the hurt, may take the beastes as a distresse, and put them in a pounce ouerte, so it be within the same shire, and there let them remaine till the owner will make him amendes for the hurt.

D.

What callest thou a pounce ouerte. S. a pounce ouerte is not only such a pounce as is commonly made in towne and lordships, for to put in beastes that be distrained, but it is also euery place where they may bee in lawfully, not making the owner an offendour for their beinge there, and that it bee there also, that the owner

*in lat apou
nd. Dought*

The xxvij. Chapter.

owner may lawfully geue the beastes meate, & drinke while they be in ponde.

*not give
rape*
D. And if they die in ponde for lacke of meate whose ieopardy is it? S. If it be such a ponde ouert as I speake of, it is at the perill of him that oweth the beastes, so that he that had the hurt shalbe at liberty to take his action for the trespasse if hee will, and if it bee not a lawfull ponde, then it is at the perill of him that distrainned, and so it is if he drue them out of the shire, and they dye there.

*action for
sound beest*
D. I put case that he that oweth þ beastes, offer sufficient amendes, & the other wil not take it, but kepeth the beastes stil in ponde, may not the owner take the out? S. No, for he may not bee his owne iudge. And if hee doe, an action lieth against him for breaking of the ponde, but he must sue a repleuin to haue his beastes deliuered him out of the ponde, & thereupon it shal be tried by xij. men whether the amendes that was offered were sufficient or not, and if it bee found that the offer was not sufficient: then he that hath the hurt shal haue such amendes as þ xij. men shall assesse. D. If it bee founde by the xij. men that þ amendes were sufficient, shall he that refuseth to take it, haue no punishment for his refusel, & for keeping of þ beastes in ponde after that time. S. I thinke no, but that he shal yeld damages in the repleuin, because the issue is tryed agaynst him.

Damages & need
695

D.
I put case that the beastes after that refusel, die in ponde for lacke of meate, at whose ieopardy is it then? S. At the ieopardy of hym that oweth

Bond.

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The xxviii. Chapter

owed þ beasts, as it was before, for he is bounde at his peril by reason of þ wrong that was done at the beginning, to see þ they haue meate as long as they shalbe in poude, vnles þ kings wozit cōe to deliuer them, & he resisteth it, for after þ time it wil be at his ieopardy if they dye for lacke of meate, & the damages shalbe recouered in an action brought vppon the statute for disobeying the kinges wozit.

nota

¶ Whether a gift made by one vnder the age of xxv. yeares be good.

The xxviii. Chapter.

I appeareth in Summa Angelica in the title donatio prima the vij. article, that a man before the age of xxv. yeare may not geue, without it bee with the authority of his tutor. Is it not so likewise at the common lawe? S. The age of infants to geue, or sell their lands and goods in the law of England at, is xxi. yere, or aboue, so that after that age the gift is good, & before þ age it is not good, by whose assent so euer it be except it be for his meate, & his drink, or apparel, or that he do it as executour, in performance of the will of his testatour, or in some other like cases that needeth not to be rehearsed here, and that age must be obserued in this realme in law and conscience, and not the said age of xxv. yere. D. I put case it were ordeyned by a decree of þ Church, that if any man by his wil bequetheth goods to an other, and willet þ they shalbe deliuered

nota

p. 4. *nota*

D. 1.

The xxviij. Chapter.

liuered to him at his full age, & that in that case
xxv. yere shalbe taken for the full age, shal not by
decree be obserued & stande good after the lawe
England: S. I suppose it shal not, for though
it belong to the church to haue by probate & the
executions of testaments made of goodes and
chattels, except it be in certaine Lordships and
feignories that haue them by prescription, yet
by church may not as it seemeth determine what
shalbe the lawfull age for any person to haue the
goodes, for that belongeth to the king & his lawes
to determine, & therefore if it were ordeined by
a stat of by realme, by hee should not in such a case
haue the goodes til he were of by age of xxv. yere,
that statute were good & to be obserued aswell
in the spiritual law as in the law of the realm,
and if a statute were good in that case, then a de-
cree made thereof is not to be obserued, for thoz-
ding of the age may not be vnder two severall
powers, and one property of euery good law of
man is, that by maker excede not his authority,
and I thinke that the spiritual Iudges in that
case ought to iudge the full age after the law of
the realme, seing that the matter of the age con-
cerneth temporall goodes, and I suppose farther
that as the king by authority of his parliamt
may ordaine that all willes shalbe boide, & that
the goodes of euery man shalbe disposed in such
maner as by statute should be assigned, by more
stronger he may appoint at what age such wilis
as he made shalbe performed. D. Thinkest thou
then by the king may take away the power of by
ordinary, that he shal not call executours to ac-
compt.

*Statute
good*

compt. S. I am somewhat in doubt therein, but it semeth that if it might be enacted by statute, that al wils should be void, as is aforesaid, that then it might be enacted that no mā should haue authority to call none to accōpt vpo such wils, but such as y statute shal therein appoint, for he y may do the more, may doe the lesse, notwithstanding I will nothing speake determinately in y pointe at this time, ne I meane not that it were good to make a statute that al wils should be boide, for I thinke them right expedient, but mine intent is, to proue that the comon law may ordaine y time of the full age as well in wils of tempozall thinges as otherwise, and also y wils shalbe made. And if it may so do, the much stronger it belongeth to the kings lawes to interpretate wils cōcerning tēpozall thinges, as well when they come in argument before his iudges, as when they come in argument before spiritual iudges, and that they ought not to be iudged by seuerall lawes (that is to say) by the spirituall iudges in one maner, and by y kings iudges, in an other maner.

Nota

Nota

¶ If a man be conuict of heresy before the ordinary, whether his goods be forfeited.

¶ The xxix. Chapt.

It appeareth in Summa Angelica in the title Donatio prima the xiiij. article, that hee that is an heretike may not make executores, for in the lawe

p. ij.

lawe

The xxviij. Chapter.

liuered to him at his full age, & that in that case
xxv. yere shalbe taken for the full age, shal not by
decree be obserued & stande good after the lawe
England: S. I suppose it shal not, for though
it belong to the church to haue by probate & the
executions of testaments made of goodes and
chattels, except it be in certaine Lordships and
feignories that haue them by prescription, yet
by church may not as it seemeth determine what
shalbe the lawfull age for any pson to haue the
goodes, for that belongeth to the king & his lawes
to determine, & therefore if it were ordeined by
a stat of by realme, by hee should not in such a case
haue the goodes til he were of by age of xxv. yere,
that statute were good & to be obserued aswell
in the spiritual law as in the law of the realm,
and if a statute were good in that case, then a de-
cree made thereof is not to be obserued, for thoz-
ding of the age may not be vnder two severall
powres, and one property of euery good law of
man is, that by maker excede not his authority,
and I thinke that the spiritual Judges in that
case ought to iudge the full age after the law of
the realme, seing that the matter of the age con-
cerneth temporall goodes, and I suppose farther
that as the king by authority of his parliamt
may ordaine that all willes shalbe voide, & that
the goodes of euery man shalbe disposed in such
maner as by statute should be assigned, by more
stronger he may appoint at what age such willes
as he made shalbe performed. D. Thinkest thou
then by the king may take away the power of by
ordinary, that he shal not call executours to ac-
compt.

*Statute
good.*

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Nota

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heretike may not make executors, for in the
D. ij. lawe

The xxix. Chapter.

law his goods be forfeit, what is the law of the realme therein. **S.** If a mā be cōit of heresies and abiure, he hath forfeit no goods, but if he be cōit of heresie, & be deliuered to lay mē's hāds, then hath he forfeit al his goods that he hath at that time y^e hee is deliuered to them, though hee be not put in executio for y^e heresy, but his lāds he shal not forfeit except he be dead for y^e heresy, & then he shal forfeit the to the lordes of the see, as in case of felony, except they be holden of the ordinary, for then the king shal haue the forfeiture, as it appeareth by a statute made y^e second yere of king Henry the first the vij. chapter. **D.** Wee thinketh that as it belongeth onely to the church to determine heresies, that so it belongeth to y^e church to determine what punishmēt he shal haue for his heresie, except deth, which they may not be iudges in, but if the church decreē y^e he shal therefore forfeit his goods, mee thinketh that they be forfeit by that decreē. **S.** May be- rely, for they bee temporall, and belong to the iudgement of the kings court, and I thinke the ordinary might haue set no fine vppon one em- peched of heresie, til it was ordeined by y^e statute of Henry the iiij. y^e he may set a fine in that case if hee see cause, and then the king shal haue that fine, as in the said statute appeareth.

Where diuers patrons of an aduowson, and the church boydeth, the patrons bary in their pre- sentments, whether y^e Bishop shal haue li- berty to present which of the incum- bents that hee will, or not.

¶ This

*not for
a gift*

*Spiritual
men can
not judge
of this*

*Judgment
in King
Court*

The xxx Chapter.

This question is asked in Summa Rosella,
In the title Patron⁹ the ix. article, & there it
 appeareth by the better opinion that he may p=
 sent whether clarke he wil, howbeit the maker
 of the said summe, saith by the rigour of p^r la^we
 the Bishop in such case may present a straüger
 because the patrons agree not, and in the same
 chapter Patronus the xv. article.

*note for
 present ment*

It is said, p^r he must be preferred that hath the
 most merites & hath the most part of p^r patr^os,
 And if the number be egall, that then it is to
 consider the merites of the patrons, and if they
 be of like merite, then may the Bishoppe com=
 maund them to agree & to present againe. And
 if they cannot yet agree, then the liberty to p=
 sent is geuen to the Bishoppe to take which he
 wil, & if he may not yet present without great
 trouble, then shal the Bishop order the Church
 in the best māner he can, & if he cannot order it,
 then shal he suspend the church & take a way p^r
 relics to the rebukes of the patr^os, and if they
 will not so be ordered then must hee aske helpe
 of the tempozaltie, and in the xv. article of the
 said title patronus. It is asked whether it bee
 expedient in such cases p^r the more part of p^r pa=
 trons agree hauing respect to al p^r patrons, or p^r
 it suffice to haue the more part in cōparisō of
 p^r lesse part as thus: There be iiii. patr^os to p=
 sent one clarke: the third p^resēteth another, & p^r
 fowerth another, he p^r is p^resēted by ij. hath not
 p^r more part in cōparisō of al patrons for they
 be egal, but he hath p^r more part hauinge respect

Id. iij.

to

The xxx. Chapter.

to the other presentmēt's, to this question it is answered that either the presentmēt is made of thē that be of y^e colledge, & there is requisite the more pt hauing respect to al the colledge, or else e- uery mā presenteth for himselfe as comonly doo lay mē y^e haue the patronage of their patrimony & thē it suffiseth to haue y^e more pt in respect of the other pties, doth not the law of Englād agree to these diuerſities? S. No verely. D. What order thē shalbe takē in the law of Englād if the patrōs vary in their p'sentments. S. After y^e laws of Englād this order shate takē, if they be iointenāts, or tenāts in cōmon of the patronage, & they vary in presentmēt, the ordi- nary is not bounden to admit none of their cler- kes neither the more part not the lesse, & if the by. monethes pas or they agree, thē he may p'sēt by the lapse, but he may not present wīn the by. monethes, for if hee do they may agree & bring a Quare imp against him, & remoue his clerke, & so the ordinary shalbe as distourbour, & if the pa- trōs haue the patronage by discēt as coparceners thē is the ordinary bound to admit the clerke of the eldest sister, for the eldest shal haue the p'ser- mēt in the law & if she wil, & thē at the next a- uoidāce the next sister shal p'sēt & so by turne, one sister after another, til al the sisters or their heires haue presented, & thē the eldest sister shal begin againe, & this is called a p'seting by turne & it holdeth alway betwene coparceners of an aduowson, except they agree to p'sēt together or that they agree by cōpositiō to present in sōe other maner, & if they do so y^e agrement must stād,

but

out on comon.

Present by
the lapse
y^e lapse.

note:

word.

by. monethes.

shown.

but this must bee alway except, yf at the first auoydāce yf shal be after the death of the common auncestre, the king haue the sword of the yōgest daughter, yf then the kynge by his prerogative shal haue the presentmēt. And at the next auoydāce the eldest sister & so by turne. But it is to vnderstād yf after the death of yf cōmon auncestre yf church voideth, & the eldest sister presented together wth an other of yf sisters, & yf other sisters euery one in their owne name or together, yf in that case yf ordinary is not bound to receiue none of their clerkes but may suffer the church to rū into yf laps, as it is said before, for he shal not be bound to receiue yf clerke of the eldest sister, but where she presenteth in her owne nāe. And in this case where the patros bary in presentmēt, the church is not properly said litigious so yf the ordinary should be bound at hys perill to directe a writ to enquire (de iure patronatus) for that writ lieth where t^{wo} present by several titles, but these patros present all in one title, & therfore yf ordinary may suffer it to pas if he wil into yf laps, & theis maner of presentmēt must be obserued in this realme in lawe & conscience.

How long time the patrō shal haue to present to a benefice.

The xxxi. Chapter.

This question is asked in Sūma angelica in the title Jus patronatus the xvj. article, and there it is answered, that if the patrō be a lay man that he shal haue iij. monethes, & if he be a clerke, he shal haue vij. monethes.

P. iij.

S.

3^o reg: Del in and
3^o reg: Del in.

34 H. 8. 55.

note mu.
for p. 116.

The xxxj. Chapter.

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S. And by the common lawe he shal haue sixe monethes whether he be a lay man or a clarke, and. **I** see no reason why a clarke shoulde haue moze respit then a lay man, but rather **p** contrary. **D.** Fro what time shal **p** vi. monethes be accompted? **S.** That is in dyuers manners after the maner of **p** voidance, for if the church boyd by death, creation, or cession: the sixe monethes shalbe compted from the death of the ecūbent, or from the creation, or cession, whereof the patrō shalbe compelled to take notice at his peril, & if the voidance be by resignation or depziation, then the sixe monethes shall beginne when the patron hath knowlege geuen hym by the Bishop of the resignation or depziation. **D.** what if he haue knowlege of the resignation or depziation and not by the Bishop, but by some other, shal not the sixe monethes begin then from the time of that knowlege? **S.** **I.** suppose that it shal not begin til he haue knowlege geuen him by the Bishoppe. **D.** An vnion is also a cause of boydance howe shall the vi. monethes be reckoned there? **S.** There can no vnion be made but the patrons must haue knowlege, and it must be appointed who shall presēt after that vniō, that is to say, one of the or both, either iointly or by turne one after another as the agreement is vppon the vnion, & sith the patron is priuy to the auoydance and is not ignozant of it, the sixe moneths shalbe accompted from the agreement. **D.** **I** see well by the reaso that thou hast made in this chapter, that ignozance soetime excuseth in the lawe of Englande

land, for in some of the sayd avoidances it shall excuse the patrons as it appeareth by the reasons above, and in some it shall not, wherefore I pray thee shewe me somewhat where ignorance excuseth in the law of England & where not after thine opinion. S. I will wryth good wyl hereafter doe as thou saiest if thou put mee in remembraunce thereof. But I woulde yet moue thee s^oewhat further in such questioⁿs as I haue moued thee before cōcerning p^r diuersities betwene p^r laws of Englad & other lawes, for there be many moe cases therof p^r as me seemeth haue right great neede for p^r good order of conspence of many p^rsons to be reformed & to be brought into one opiniō both amōg spiritual & tēporal, as it is in p^r case where doctors hold opiniō that the statut of lay men that restraine libertie to geue lands to the church shoulde be void, & they say further that if it were prohibite by a statut p^r no gift shoulde be made to foreines p^r yet a gift made to the churche shoulde be good, for they say p^r the inferiour may not take away the authoritie of the superior, & this saying is directly against the statutes whereby it is prohibite that lāds shoulde not be giuen into mortmaine, & they say also that bequestes and gifts to the church must be determined after the law Cannon, and not after the lawes & statutes of laye men, and so they regarde much to whō the gifte is made whether to p^r church or to make causwaies, or to cōmon persōs: & beare more fauour in giftes to the Church then to other, and the law of the realme beholdeth the thinge p^r is geuen

The xxxij. Chapter.

geuen & pretended yf the thinge y is geuen be of lands or goods y the determination therof of right belongeth in this realme to y kings lawes whether it be to spiritual mē or tēporal, to the church or to other, & so is great diuision in this behalfe whē one pferreth his opiniō, & another his, & one this iurisdiction, & another that, & that as it is to feare more of singularitpe thē of charity: wherefore it semeth y they y haue y greatest charge ouer the people specially to y health of their soules, are most bound in cōsciēce before other to looke to this matt, & to doe that in thē is in al charity to haue it reformed not beholding the tēporal iurisdiction nor spiritual iurisdiction but the cōmō wealthe & quietnes of the people: & that vndoubtedly would shortly follow if this diuisiō were put away, which I suppose verily wil not be but that al mē win y realme both spiritual & tēporal bee ordered & ruled by one law as to tēporal things: notwithstanding for as much as the purpose of this writinge is not to treat of this matt, therefore I will no farther speake thereof at this time. D. Then I pray thee prede to another questiō as thou saiest thy minde is to doe. S. I wil w good wil.

¶ If a man be excommunicated whether he may in any case be assoyled wout making satisfaction.

The xxxij. Chapter.

In the summe called *Summa Rosella*, in the title *Absolutio quarta*, the second article: it is said

saied that he that is excommunicate for a wzōg if he be able to make satisfaccion ought not to be assoyled but he doe satisfie, & that they offend & do assoyle him, but yet neuertheles he is assoyled, & if he be not able to make amendes that he must yet be assoyled, taking a sufficient gage to satisfie if he be able hereaft, or els that he make an other to satisfie if he be able. And these sayings in many things hold not in the lawes of England. D. I pray thee shew me wherein the lawe of the Realme varieth therefro. S. If a mā be excommunicate in the spiritual court for debt, trespass, or such other things as belong to the kings crowne, & to his royal dignitie, there he ought to be assoyled without makinge any satisfacciō, for the spiritual court exceedeth their power in that they held plee in thole cases and the party if he will may thereupon haue a *Procuratore facias*, aswel against the partye that sued him, as against the iudge, & therfore in this case they ought in cōscience to make absolution without any satisfaccion, for they not onely offended the party in calling him to answer before the of such things as belong to the lawe of the realme, but also the kinge, for he by reason of such suites may leese great aduantages by the reasō of the writs originals, iudicials, fines, amerciaments & such other things as might growe to him yf suits had be takē in his courts according to his lawes, & according to his saying it appeareth in diuers statutes yf if a mā lay violēt hāds vpon a clerke & beat him, that for the beating amendes shal be made in the kings court, & for the laying of

nota

nota:

The xxxij. Chapter.

of violent hands vpon the clarke amendes shall
be made in the court christien. And therefore if
p Judge in the court christie would award the
party to yeld damages for the beating, he did a-
gainst the statute, but admit that a man bee ex-
commēged for a thinge that the spiritual court
may awarde the party to make satisfiſſation of,
as for the not incloſing of the churchyard, or for
nor apparellinge of the Church conueniently:
The I thinke the party muſt make reſtitution
or lay a ſufficient cauſe if he be able or he be af-
ſoiled, but if the party offer ſufficient amends
& haue his abſolution, and the iudge will not
make him his letters of abſolution, if the ex-
commengement bee of recorde in the Kinges
court then the Kinge may ſwrit vnto the ſpy-
ritual Iudge, commaunding him that he make
the party his letters of abſolution vppon paine
of a contempt, & if the ſaid excommunication be
not of recorde in the kings court, then the party
may in ſuch caſe haue his action againſt p iudge
ſpiritual for that he would not make him hys
letters of abſolution, but if he be not aſſoiled or
if he be not able to make ſatiffiſſation, & therfore
the iudge ſpiritual wil not aſſoile him, what p
kings lawes may doe in that caſe I am ſome-
what in doubt, and will not much ſpeake of yt
at this time, but as I ſuppoſe he may as well
haue his action in that caſe for the not aſſoiling
him, as where he is aſſoiled, & p the iudge will
not make him his letters of abſolution: and I
ſuppoſe the ſame law to be where a man is ac-
cuſed for a thinge that the iudge had no power
to

to accurse him in, as for debt, trespass, or such other. D. There he may haue other remedies, as a Premunire facias, or such other, & therfore I suppose the other action lyeth not for him. S. The Judge & the party may be dead, and then no Premunire lieth, and though they were a liue & were condemned in Premunire, yet that should not auoide þ excommungement, & therfore I thinke the action lieth specially, if he be thereby delayed of actions þ he might haue in þ kings courte, if the said excommungement had not bene.

¶ Whether a Prelate may refuse a legacie.

¶ The xxxiiij. Chapt.

It is moued in the said summe, named Rosella, in the title Alienario xx. the xi. article, whether a prelate may refuse a legacy, wherein diuers opinions be recited there, which as me thinketh haue neede after the lawes of the realme to be more plainly declared. D. I pray thee shew me what the lawe of the realme will therein.

S. I thinke that euery prelate and soueraigne that may onely sue, & be sued in his owne name as Abbottes, Bishops, and such other, may refuse any legacy that is made to the house, for the legacy is not perfit tyll hee to whom it is made assent to take it, for els if he might not refuse it, hee might be compelled to haue landes whereby he might in some case haue great losse, but

note for the legacie.

The xxxij. Chapter.

but the if he intende to refuse, he must as soon
as his title by the legacy faileth, relinquiſhe to
take the profits of y^e thing bequethed, for if one
take the profits thereof, he ſhal not after refuse
the legacy: but yet his ſucceſſor may if hee will
refuſe the taking of y^e profits to ſave the houſe
fro^e yelding damages, or fro^e arretages of rents
if any ſuch bee, & like lawe is of a remainder, as
is in legacy, for though in y^e caſe of a remainder
& alſo of a deviſe as moſt men ſay, that treholde
is caſt vpon him by the law when the remainder
or deviſe faileth: yet it is in his liberty to reſuſe
the taking of the profits, & to reſuſe y^e remain-
der, if he wil as he might do of a gift of lads, or
good, for if a gift be made to a man y^e reſuſeth to
take it, the gift is voide, & if it be made to a man
y^e is abſent, y^e gift taketh not effect in him til he
aſſent: no more then if a man diſeiſe one to an o-
ther mans vſe, hee to whole vſe the diſſeiſon is
made, hath nothing in that land, ne is no diſſei-
ſour til he agree. And to ſuch diſſeiſons & gifts,
an Abbot or Prior may diſagree alſo as any
other man, but after ſome men a Biſhop, of a de-
viſe, or remainder that is made to the Biſhop,
and to the Deane and Chapter, nor a Deane
and a Chapter of a deviſe, or remaynder made
to them, ne yet the maſter of a colledge of ſuch
a deviſe, or remaynder made to him and to hys
brethren, may not diſagree without the Chap-
ter or brethren, for the Biſhoppe of ſuch lands
as hee hath with the Deane and Chapter, ne
the Deane, nor Maſter of ſuch lande as they
haue w^{ith} the Chapter, or Brethren maye
not

note

if one take
the profits he
ſhal not
after refuse

like lawe
as in legacy

his liberty
to reſuſe

no poſt diſagree
of Chapter

not answer wout the chapter & brethren, and
 therefore some say yf if the deane, or master will
 refuse, or disclaime in the lades, that they haue
 by y deuise or remainder, that disclaime wout
 the chapter or brethren is boide. And therefore
 it is holden in the law, yf if a Bishop be vouched
 to warranty, and yf tenant bindeth him to the
 warranty by reason of a lease made to him by y
 Bishop, and by the deane and the Chapter, yel-
 ding a rent, yf in that case yf bishop may not dis-
 claime in the reuersion without the assent of y
 deane and chapter. But yet if a reuersion were
 graunted to a deane, & a chapter, & the deane re-
 fuse, the graunt is boide, & so it appeareth that
 a Deane may refuse to take a giste, or graunt of
 landes, or goods, or of a reuersion made to him,
 and to the chapter, and yet he may not disagree
 to a remainder, or deuise, and the diuersity is be-
 cause the remainder & deuise be cast vpon him
 without any assēt, wherunto neither the deane
 nor yf chapter by theselues, may in no wise dis-
 agree wout the assēt of the other, but a gift or
 graunt is not good to them wout they both as-
 sent; and in such gifts as I suppose an infant
 may disagree as wel as one of full age, but if a
 woman couert disagree to a gift, & the husband
 agree, that gift is good. ¶ What if the landes
 in that case, of a mā & his wife be charged with
 damages, or bee charged with moze rent then
 the land is worth, and the husband die, shal the
 wife be charged to the damages, or to the rent?
 ¶ I thinke nay, if the wife refuse the occupa-
 tion of the ground after her husbandes death,
 and

*disclaime
now*

replevied al de

diuine

infant

found court

The xxiiij. Chapter.

¶ I thinke the same law to be if a lease bee made to the husband & the wife yeelding a great rent then the land is worth, that y^e wife after y^e husbands death may refuse the lease to saue her fro^m the payment of the rent, & so may the successor of an Abbot. And if the husband in y^e case ouerliue the wife, & then make his executours & die, whether may his executours in likewise refuse y^e lease. S. If they haue goods sufficient of their testator to pay the rent, I thinke they may not refuse it, but if they haue not good sufficient of their testatour to pay the rent to the end of the terme, I thinke if they relinquish the occupation, they may by speciall pleadinge discharge themselves of the rent and the lease, and if they do not, thei may lightly charg theseluez of their owne goods. And if a lease bee made for terme of life, the remainder to an Abbot for terme of life of John at Stile, reseruing a greater rent the the lande is worth, and after the tenante for terme of life dieth, the Abbot may refuse the remainder for the cause before rehearsed, & in case that the Abbot assent to the remainder where by he is charged to the rent during the time y^e hee is Abbot, & after hee dieth or is deposed liuinge the said John at Stile, in y^e case his successoure may discharge himselfe by refusing the occupation of the land, as is aforesaide. But I thinke that if such a remainder were made to a Deane, and to the chapter, & the Deane agree without the assent of the Chapter, that in that case the deane and the Chapter may afterward disagree to the remainder, and that the acte of the deane

with

note

note

by speciall
pleadinge

out þ assent of the Chapter shal not charge the chapter in þ behalfe, & thus it appereth though the meaning of the said chapter & article in the said time be, þ a prelate may not disagree unto a legacy, for hurting of þ house, yet hee may aff the lawes of the realme disagree thereto, where it should hurt his house. And if in a Precipe quod reddat, there be but one tenant, be he spiritual or temporal, & he refuse by way of disclaimer in such case, where he may disclaime by þ law, there the land shal best in þ demandat, & if there be n. tenants the it shal best in his felow, if he wil take the whole tenacy by þ him, or els it shal best in the demandat. But if an Abbot or a lay man refuse þ taking of þ profits, & shew a special cause why it should hurt him if hee did assent, and bee thereby discharged as is said befoze: In which þ land shal the best it is more doubt, whereof I wil no farther speake at this time. And thus it appeareth by diuers of the cases that be put in this chapter that he þ is ignorant in the law of þ realme, shal lacke þ true iudgement of conscience in many cases. For in many of these cases that may be don therein by the law, must also be observed in conscience, &c.

discharged.

Whether a gift made vnder a condition bee void, vnder if the soueraigne only breake the condition.

The xxxiiij. Chapter.

In Summa Rosella in the title Alienatio, the xxij. article, is asked this question, whether a gift made

Q. i.

made

The xxxiiij. Chapter.

gift made vnder a certayne fourme may bee auoided or reuoked, because the Prelate or Soueraigne onely did breake the fourme, and it is there answered that it may not, for that the deede of the Prelate only ought not to hurt the church, & if those wordes vnder a maner be vnderstande of a gifte vppon conditpon as they seeme to be, then the said solution holdeth not in this realme neither in laswe nor conscience. **Q.** What is then the laswe of Englande if a man enfeoffe an Abbot by deede indented vppon condition, that if the Abbot pay not to the lessor a certeine summe of money at such a day, that then it shalbe lawfull to the lessor to reenter, and at that day the Abbot faileth of his payment, may the feoffoure lawefully reentre and put out the Abbot.

A. Yea verely, for hee had no right to the lande but by the gifte of the lessour, and his gifte was conditionel, and therfore if the condition be broken, it is lawefull by the laswe of Englande for the lessour to reentre, & to take his lande againe & to hold it as in his first estate, by which reentre after the lawes of the realme, he dispozoneth by first liuery of seison, & al y meane acts don betwene the first feoffement and the reentre, and it forreth litle in the laswe, in whom the default be that the condition was not perfozmed, whether in the Abbot or in his couent, or in bothe: or in any other person whatsoeuer he be, except it bee in the feoffoure him selfe. And it is great diuersity betwene a cleare gift made to an Abbot without conditpon, and where it is made with

Nota.

And

With condition, for whē it is made without cō-
 dition the act of the Abbot only shal not by the
 common lawe disherite the house, but it bee in
 very fewe cases, but yet vppon diuers statutes
 the sufferance of the abbot only may disherite
 the house, as by his ceasser, or by leaupinge of a
 crosse vppon a house against the statute thereof
 made, in which case the house thereby shal lose
 the land, & some say that by the cōmon law vppon
 his disclaunour in auowry, a writ of righte
 of disclaunour lieth, but if the gift be vpon cō-
 dition, it standeth neither w law nor cōscience, &
 the Abbot shoud haue any more perfitt or sure
 estate then was geuen vnto him, and therefore
 as the said estate was made to the house vppon
 condition, so that estate may be auoided for not
 performing of the condition, and I think ve-
 rely that this I haue said is to be holde in this
 Realme, both in the lawe and conscience, & that
 the decrees of the church to the contrary, bynde
 not in this case. But if the lands be geuen to an
 Abbot, and to his couent, to the intent to finde
 a Lampe, or to geue certayne almes to poore men
 though the intent bee not in those cases fulfil-
 led, yet the feoffour, nor his heires may not
 reenter, for hee reserued no reentre by expresse
 wordes, ne in the words, when he sayth, to the
 intent to finde a Lampe, or to geue almes, &c.
 is implied no reentre, ne the feoffour, nor his
 heires shall haue no remedy in such cases, un-
 lesse it bee within the case of the statute of
 Westminster the second that geueth the Cessante

de Camaria.

Q. ij.

¶ When

cap. 2. de sol.
diffinit

distained.

note
no for no
words
is refer.

The xxxv. Chapter,

Whether a couenant made vpon a gift to the Church, that it shal not be aliened (be good.

The xxxv. Chapter.

In the saide summe, called Summa Rosella, the saide title Alienation, the xij. article is asked this question, whether a couenant made vpon a gift to the church, that it shal not be aliened be good. And the same questiō is moued againe in the said Summa called rosella, in y^e title condicio the first article, & in Summa Angelica, in the title Donacio prima, the li. and liij. articles, and the intent of the questiō there is whether notwithstanding y^e the condition be good to some alienations, whether y^e yet it be good to restraine alienations for the redemptiō of thē that be in captiuitie vnder y^e infidels, or for the greater aduantage to y^e house, and though the better opinion be there, that the condition may not bee broken for redemption of them that bee in captiuitie: yet it is in manner a whole opiniō that it may be sold for the greater aduantage to the house, for it is said there that it may not bee taken, but that the intent of the geuer was so, & therefore they cal the condition that prohibiteth it to bee solde (condicio turpis) that is to say, a vile cōdition, wherfore they regard it not: but verely as I take it, if a conditiō may restraine any maner of alienation, then it shal aswel restraine alienations for the two causes before rehersed, as for any other causes, & though me thinketh y^e that cōditiō is good, &
after

*condicio
turpis*

after the lawes of the realme, that vpon gifts
to the Church restraineth alienations, yet
that toucheth one reason that is made to the con-
trary, that is this, There is a cleare grounde in
the law, that if a feoffement be made to a com-
mon person in fee vpon condition that the lessee
shal not alien to no man, that condition is void,
because it is contrary to the estate of a fee sim-
ple to bind him that hath y^e estate y^e he shoulde
not alien if hee will, & some say that an Abbot
that hath lande to hym and to his successors
hath as high and as perfect a fee simple as hath
a lay man that hath land to him and to his hei-
res, and therefore they say that it is as well a-
gainst the law of the Realme to prohibite that
the Abbot shal not alien, as it is to prohibite
a lay man thereof, and though it be therein true
as they say as to the highnes of the estate, yet
we thinke there is great diuersity betwene
cases concerning their alienations, for wheⁿ lands
be given in fee simple to a common person: the
intent of the lawe is that the lessee shal haue
power to alien, & if he do alien, it is not against
the intent of the lawe, ne yet against the intent
of the feoffor, but when landes be given to an
Abbot and to his successors, the intent of the
lawe is, and also of the giver (as it is to pre-
sume) that it shoulde remaine in the house for-
uer, and therefore it is called Mortmain, that
is to say, a dead hand as who sayth that it shal
abide there alway as a thing dead to the house.
And therefore as I suppose the law wil suffer
that condition to be good y^e it is made to restrayne

D. in.

that

*Agreement
in the law:*

Nota:

*First Case
where
Alienation.*

The xxxv. Chapter.

that such mortmaine should not be aliened and
 that yet it may prohibite the same condition to
 be made vpon a feoffement made in fee simple
 to a man & to his heirs for that is the most high,
 the most free, & the most purest state p is in the
 law. But the lawe suffereth such a condityon
 to be made vpon a gift in taylor because the sta-
 tute prohibiteth that no alienation shoulde bee
 made therof. And the as the lawe suffereth such
 a condition vpon a gift in mortmaine, that is to
 say, that it shal not be aliened, to bee good: then
 it iudgeth the condityon also accordeinge to the
 wordes, that is to say, if the condition bee ge-
 neral that they shal alien to no man as this case
 is that it shal be taken generally according to p
 wordes, and it shal not be taken that the intent
 of the geener was other wise then be expressed
 in his gyft, though he percase if he were a lyue
 himselfe and the questio were asked him whe-
 ther he would be contented it should be aliened
 for the said two causes or not, he would say ye,
 but when he is dead no man hath authoritie
 to interprete his gift otherwise then the lawe
 suffereth, nor otherwise then the wordes of the
 gift be. And if the condityon be special, that is
 to say, that the land shal not be aliened to such
 a man or such a man, then the condition shal be
 taken according to the wordes, & then they may
 be aliened as for that condityon to any other but
 to them to who it is expressly prohibited that
 the land should not be aliened to.
 And if the landes in that case be aliened to one
 that is not except in the condition, then he may
 alien

Note

*vpon gift
in fee
simple
and
it is good*

*in wordes
of gift only
to be con-
sidered:*

*Special
condition*

alien the land to him that is first excepted wout breaking of the condition, for conditions be taken straitely in the law and without equity.

And thus me thinketh that because the said condition is general & restraineth al alienations, that it may not be aliened neither by the law of the realme, ne yet by conscience, no more for the said two causes, then it may for any other cause, & this case must of necessitie be iudged after the rules & grounds of the law of the realme, & after no other law as me seemeth.

31 H 8 45.

general
condition
prohibited

If the patron present not within vij. monethes, who shall present.

The xxxvj. Chapter.

In the said summe called Summa Rosella, in the tytle Beneficium in principio it is asked, if the patron present not within six monethes who shall present, and within what tyme the presentment must be made. And it is answered there that if the patron present not within vij. monethes, that the Chapter shall haue six monethes to present, and if the chapter present not within vij. monethes, that then the Bishop shall haue other vij. monethes. And if he be negligent, then the Metropolitane shall haue other vij. monethes, and if he present not, then the presentment is deuolute to the Patriarke. And if the Metropolitane haue no superior vnder the Pope, then the presentment is deuolute to the

D. iij

Pope

The xxxvj. Chapter.

Note Pope. And so as it is said there þ Archbisshop
shal supply the negligence of the byshoppe if he
be not exempt, and if he be exempt the present-
ment immediatly shal fal from the Bisshop to þ
Pope. And as I suppose these diuercities hold
not in the lawes of the realme.

D. Then I pray thee shew me who shal pre-
sent by the lawes of the realme if the patron do
not present within his six monethes.

S. Then for default of the patron þ Byshoppe
shal present vnesse the king be patron, and yf
the Bisshop present not wythin six monethes
then the Metropolitane shal present, whether
the Bisshop be exempt or not. And if the Me-
tropolitane present not within the time limited
by the law, then there be diuers opinions who
shal present, for some say þ the Pope shal pre-
sent, as it is said before, and some say the king
shal present.

D. What reason make they þ say þ King shoulde
present in y case. **S.** This is their reason they
say þ the king is patron paramount of al þ be-
nefices within þ realme. And they say further
þ the kinge and hys progenytours Kinges of
England without tyme of mynd haue had auctho-
ryte to determine þ right of patronages in
this realme in their owne courts, & are bounde
to see their subiects haue ryght in that behalfe
within the realme, & y in that case from him li-
eth no appeale. And then they say þ if þ Pope
in this case shoulde present, that then the Kinge
shoulde not onely leese his patronage paramount,
but also that he shoulde not soetime be habile to

*the patron
paramount*

to right to his subiects.

D. In what case were that: **S.** It is in this case: the lawe of the realme is, that if a benefice fall void that the patron shall present within bi. monethes: and if he doe not that then the ordinary shall present, but yet the lawe is farther on that case, that if the patron present before the ordinary put in his Clerke: that then the patron of right shall enter his presentment, and so it is though the time should fall after to the Metropolitan or to the Pope, and if the presentment should fall to the Pope, then though the aduocation abode still void, so that the patron might of right present, yet the patron should not knowe to whome hee should present, vntill he should goe to the Pope, and so hee should faile of right within the realme. And if perchance he went to the Pope and presented an able clerke vnto him, & yet his clerke were refused & another put in at the collation of that Pope or at the presentment of a stranger, yet the patron could haue no remedy for y^e wronge within the realme, for the incumbent might abide still out of the realme. And therefore the lawe will suffer no title in this case to fall to the Pope. And they say, & for a like reason it is that y^e lawe of the Realme will not allow an excommunication that is certified into the kings court by the Popes Bullas, for if the party offered sufficient amends, and yet could not obtaine his letters of absolution, the king should not knowe to whom to write for the letters of absolution, & the party could not haue right, that

patron of
right shall
enter y^e l^r

in some rule
y^e p^rson
y^e l^r

The xxxvj. Chapter.

that the law wil in no wise suffer. D. The patron in that case may present to the ordinary as long as the church is boide, and if the ordinary accept him not, the patron may haue his remedy against him wⁱⁿ the realme.

But if the Pope will put in an encumbent before the patron present, it is reason that he haue the preferment as me seemeth before the kinge,

S. When the ordinary hath surcesed his tyme he hath lost his power as to that presentment, specially if p collation be deuolute to the Pope.

And also when the presentment is in the Metropolitane he shall put in the clerke himselfe & not the ordinary, and so there is no default in p ordinary though he present not the clerk of the patron, if his tyme be past, and so their lyeth no remedy against him for the patron.

D. Though the encumbent abide skil out of the Realme yet may a Quare impedit lye agaynst him w^{ithin} the Realme, and if the encumbent make default vpon the distresse and appeare not to shewe hys title: then the patron shal haue a writ to the Bischopp according to the statute & so he is not without remedy.

S. But in this case he cannot be summoned, attached, nor distrained, w^{ithin} the realme. D.

He may be summoned by the Church as the tenant may in a writ of right of aduowson. S.

There the aduowson is in demaund, & here the presentment is onely in debate, and so he cannt bee summoned by the church here, no more then if it were in a writ of annuities, and there p common returne is (quod Clericus est & beneficiatus,

patron
remedy

non habens laicum feodum ubi potest summoneri) And though he might be summoned in the Church, yet he might neither be attached nor distrained there, & so the patron should be without remedy. D. And if he were without remedy, he should yet be in as good case as he should be if the king should present, for if the title should be given to the king, the patron had lost his presentment clerely for the time, though y^e church abide stil void. f^{or} I have heard say y^e in such presentments no time after the law of the Realme runneth unto the king. S. That is true, but there y^e presentment shoulde be taken from him by right & by the lawe, & here it shoulde be taken from him against the lawe, & there as the law could not helpe him, & y^e the lawe will not suffer. D. Yet me thinketh alway y^e the title of the laps in such case is given by the law of the church, & not by y^e tēporal law, & therfore it fozeeth but lytle what the tēporal law wil in it as me semeth. S. In such countries where y^e Pope hath power to determine the right of tēporal things, I thinke it is as thou saist, but in this Realme it is not so, And the right of presentment is a tēporal thing, & a tēporall inheritance, and therfore I thinke it belongeth to y^e kings law to determine, & also to make laws who shall present after the vi. monethes as wel as before, so y^e the title of examination of abilitie or nonabilitie be not thereby taken frō the ordinary, & in likewise it is of avoidance of benefices, that is to say, thē it shalbe iudged by the kings lawes when a benefice shalbe laied voide & when not,
and

The xxvj. Chapter.

and not by the lawe of the Church as when a
 pld is made a Bishop or accepteth another bee-
 nefice without licence, or resigneth, or is depri-
 ved, in these cases the common lawe saith, that
 benefice is voide, and so they shoulde be, though
 a law were made by the Church to the contra-
 ry, and so if the Pope shoulde have anye title in
 this case to present, it shoulde be by the lawe of
 Realme. And I have not seen ne hard that
 lawe of the realme hath given any title to the
 Pope to determine any temporall thing, nor may
 be lawfully determined by the kings court.
 D. It seemeth by that reason that thou hast
 made now, that thou preferrest the kinges au-
 thoritie in presentments before the Popes, and
 that me thinketh shoulde not stand with the lawe
 of god. A. The Pope is the vicar generall un-
 der god. S. That I have said proueth not, for
 the highest preferment in presentments he is
 to have authoritie to examine the ability of the
 person that is presented, for if the presentee be
 able, it sufficeth to the discharge of the ordina-
 ry, by whom soever he be presented, & that au-
 thoritie is not denied by the lawe of the realme
 to belong alway to the spirituall iurisdiction,
 but my meaning is, that as to the right of pre-
 sentmentes & to determine who ought to pre-
 sent and who not, and at what tyme, & when
 the Church shall be indged to be voide, and
 when not, belongs to the kinge and his lawes,
 for else it were a thing in vaine for him to holde
 plea of abuses, or to determine the right of
 patronage in his owne courts, and not to have
 autho-

means
 master
 is
 vout

of good
 vout general

nota

authoritie to determine þ right thereof, & those
claimes seemeth not to be against the law of god
And so me seemeth in this case þ p̄sentment is ge-
uen þ king. D. and if þ king should haue righte
to p̄sent, the might þ church happen to cōtinue
void for euer, for as we haue said before no time
runneth to þ king in such presentments. S. If
any such case happe if þ kinge present not, then
may þ ordinary let in a deputy to serue the cure
as hee may doe when negligence is in other pa-
trons that may p̄sent & do not, & also it canot bee
thought þ the king which hath þ rule & gouer-
nance ouer þ people not only of their bodies, but
also of their soules will hurt his cōscience & suf-
fer a benefice cōtinually to stand without a cu-
re no more then he doth in aduowsons þ bee of
his owne presentment.

nota

Whether the presentment and collation of all
benefices & dignities, boyding at Rome, be-
long only to the Pope.

The xxxviij. Chapter.

In the same summe, called Summa Rosella, in the
title Beneficium primum, in the xij. article. It is
saide that benefices, dignities, and personages,
boyding in the court of Rome may not bee geue
but by the Pope & likewise of the Popes ser-
uants and of other that come, and goe from þ
court, if they dye in places nigh to the court
within thre dayes iourney, all these belong to
the Pope, but if the Pope present not wyth-
in a

The xxxvij. Chapter.

Within a moneth: then after the moneth they to whom it belongeth to present, may present by themselves only, or by their vicar general if they be in farre parties, & these sayings holde not in the lawe of the Realme. D. What is the cause that they holde not in this realme, as well as in all other realmes. S. One cause is this. The king in this realme accordinge to the auncient right of his crowne, of all his aduocacions that be of his patronage oweth to p̄sent. And in likewise other patrons of benefices of their presentment, and the place of the right of presentments of benefices within this realme, belonge to the kinge and his crowne. And these titles cannot be taken fro the kinge and his subiectes, but by their assent, and the lawe that is made therein to put away p̄ title, bindeth not in this realme, & ouer that before p̄ statute of 25. of Ed. the 3. there was a great inconuenience & mischief, by reason of diuers prouisions & reseruacions that the Pope made to the benefices in this realme contrary to the olde right of the kinge & other patrons in this realme, as wel to the Archbishops, Bishopps, Deanries, and Abbies, as to other dignities & benefices of the church. And many times aliens thereby had benefices within p̄ realme that vnderstode not the Englishe tongue, so that they coulde not connsaile ne comfort the people when neede required, and by p̄ occasion great riches was conueighed out of the realme, wherefore to auoide such inconueniences: it was ordayned by the saide statute that all patrons as well spirituall as temporall should

*Statute of 25. Ed. 3.
499 gnd*

should haue the presentments freely, & in case y^e collation or prouision were made by y^e Pope in disturbāce of any spiritual patron, that the for that time the king should haue the presentmēt, & if it were in disturbāce of any lay patron: that then if y^e patron presentd not within the halfe yeare after such voidāce, nor y^e Bishop of the place within a moneth after the halfe yeare: that then the king should haue also the presentment, & that y^e king should haue the profits of the benefices so occupied by prouision, except Abbies & Priors, & other houses y^e haue colledge & couent, & there the colledge and couent to haue the profits, and because the stat is generall & excepteth not such benefices as shall boide in the courte of Rome or in such other place as before appereth, therefore they be taken to be within the prouision of the said estatute aswell as y^e benefices that boide within the realme, & all prouisors & executors of the said collations & prouisions & al their attorneys, notaries, & maintainers, shalbe out of y^e protection of the king, & shall haue like punishment as they should haue for executing of benefices boidinge within the realme. D. But I cannot see how the said statute may stand with conscience, that so farre restraineth the Pope of his liberty, which as mee seemeth hee ought in this case of right to haue. S. because as I suppose patrons ought of right to haue their presentments, vnder such maner as they claime the in this realme, as I haue said before, and as in the xxxij. chap. of this booke appereth more at large, and also for as much as it appereth evidently that

*King
to haue
the presentment*

The xxviiij. Chapter.

that great inconuenience folloved vpon the said
prouisions, and that the said estatute was made
to auoide the same, which sith that time hath
bene suffred by the Pope, and hath bene alway
vsed in this realme without resistance that the
saide estatute should therefore stande with good
conscience.

If a house by chaunce fall vpon a horse that
is borrowed, who shal beare the
losse.

The xxxviij. Chapter.

In the saide summe called Summa Rosella, in the
title Casus fortuitus, in the beginninge is put
this case, if a man lend to an other a horse, which
is called there Depositem, and a house by chaunce
falleth vpon the horse, whether in that case he
shall answer for the horse? And it is an-
swered there, that if the house were like to fall,
that then it cannot be taken as a chaunce, but as
the default of him that had the horse deliuered
to him. But if the house were stronge, and of
likelihoode and by common presumption in no
daunger of fallinge, but that it fell by sodaine
tempest or such other casualty, that then it
is to be taken as a chaunce, and hee that had the
keeping of the horse shal be discharged, and though
this diuersity agreeth with the lawes of the
realme, yet for the more playn declaration
thereof, and for the more like cases and chaunces
that may happen to goddes, that a manne hath

Depositu

not sufficient

The xxxviiij. Chapter 129

In his keeping y^e be not his owne. I shall adde a little moze thereto y^e shalbe somewhat necessary as mee thinketh to the ordering of conscience. First a mā may haue of another by way of lone or borowinge, money, corne, swine, & such other things where the same thing cannot be deliuered if it be occupied, but an other thinge of like nature, & like value must be redelyuered for it, & such things he that they be let to, may by force of y^e lone vse as his owne. And therefore if they perish, it is at his ieopardy, & this is most properly called a lone. Also a man may lende to another a horse, an oxe, a cart, or such other things that may be deliuered againe, and they by force of that lone, may be vsed and occupied reasonably in such maner as they were borrowed for, or as it was agreed at the time of the lone, y^e they should be occupied, & if such things be occupied otherwise then according to thintet of y^e lone, & in that occupatiō they perish, in what wise soeuer they perish, so it be not in default of y^e owner, he that borrowed the shalbe charged therewith in law & conscience: & if he that borrowed the occupy them in such maner as they were lent for, and in that occupation they perish in default of him that they were lent to, the he shal answer for them. And if they perish not through his default, then hee that oweth them shall beare the losse. Also if a man haue goods to keepe to a certaine day, for a certaine recompence for y^e keepinge, hee shal stande charged or not charged, after as defaulte or no defaulte shalbee in him as before appeareth, and so it is if he haue nothing

B. j.

for

Addition

Nota

shall be lent

 to borrow
 or charged
 in law &
 conscience

The xxxviij. Chapter.

for the keeping, but if he haue for the keeping, & make promise at the time of y^e deliuey to rede-
 liuer the safe at his peril, then he shalbe charged
 wth al chaunces that may fal. But if he make that
 promise and haue nothing for keeping; I thinke
 he is bounde to no such casualties, but y^e bee swil-
 full & his owne default, for y^e is a nude, or a na-
 ked promise, wherupon as I suppose no action
 lieth. Also if a man finde goods of an other, if
 they be after hurt or lost by wilful negligēce, he
 shalbe charged to the owner, but if they be lost
 by other casualty, as if they be layde in a house
 that by chaunce is burned, or if he deliuer the to
 an other to keepe that runeth away wth the:
 I thinke he be discharged, and these diuersities
 hold most commonly vpon pledges, or where a
 man hiereth goods of his neighbor to a certaine
 day for certain money, & many other diuersities
 be in the lawe of the realme, what shalbe to the
 ieopardy of the one, & what of the other, which
 I wil not speake of at this time. And by this it
 may appere that as it is cōmonly holden in the
 lawes of Englands if a common carier goe by
 the wayes that bee dangerous for robbing, or
 driue by night, or in other inconuenient time, &
 be robbed, or if he ouer charge a horse, whereby
 he falleth into the water or otherwise, so y^e the
 stuffe is hurt or impeyred, y^e he shal stande char-
 ged for his misdemeanour, & if hee would please
 refuse to cary it, vnles promise were made vnto
 him y^e he shall not bee charged for no misdeamea-
 nor that should be in him, y^e promise were void.
 For it were against reasoⁿ & against good maners
 and

*willfull
 at his
 owne default
 note*

*note for
 lawyer*

promise void

and so it is in al other cases like. And all these diuersities be graunted by secundary cōclusions deriued vpon the lasw of reaso without any estatute made in that behalfe. And peraduenture lawes, and the conclusions therein, bee the more plaine, & the more open. For if any statut were made therein, I think verely no doubts, & questions would rise vpon þ statut, then doth now when they be only argued and iudged after the common lawe.

¶ If a priest haue wonne much goods by saying of masse, whether hee may geue those goods or make a will of them.

¶ The xxxix. Chapter.

In the said sūme called Sūma Rosella in the title clericus quartus þ third article, is asked this questio, if a priest haue wonne much goods by saying of masse, whether he may geue those goods or make a will of them: wherto it is answered there, that he may geue them, or make a will of the, specially whē a mā bequetheth mony for to haue masses said for him, & þ like lawe is of such things as a clark winneth by þ reaso of an office. For it is said there, þ such thinges cōe to him by reaso of his owne pson, which sayings I think accord w þ law of þ realme. But forasmuch as in þ said article & in diuers other places of þ said chapf, & in diuers other chapters of the said sūme, is put great diuersity betwene such goods, as a clarke hath by reason of hys

R. ij.

church

The xxxix. Chapter.

*goodre by
reason of
no of sum*
church, and such goodes as hee hath by reason of
his person, & that he must dispose such goods as
he hath by reaso of his church in such maner as
is appointed by the laswe of the church, so that
he may not dispose them so liberally, as he may
the goods that come by reason of his owne per-
son, therefore I shal a litle touch what spiritu-
all men may doe with their goods after the laswe
of the Realme.

2 of aply
First a Bishop of such goods as he hath with
the Deane & the Chapter he may neither make
gifte nor bequest, but of such goods as hee hath
of his owne by reaso of his church or of the gift
of his auncellers or of any other, or of his patri-
mony, he may both make gifts & bequests law-
fully. And an Abbot of the goods of his church
may make a gift, and that gift is good as to the
laswe. But what it is in conscience that is af-
ter the cause & intent & quality of the gift, for if
it be so much that it notably hurteth the house
or the couent, or if he geue away the bookes, or
chalices, or such other thinges as belong to
seruice of God, he offendeth in conscience, & yet
he is not punishable in the laswe, ne yet by a Sub
pena after some mē, ne in none otherwise but by
the laswe of the church as a swaster of the goods
of his monastery. But neuertheles I will not
fully hold y opinion, as to y that belongeth ne-
cessarily to y seruice of god, whether any reme-
dy lie against him or not, but remit it to y iuge-
ment of other. And a Deane and Chapter, &
a master & brethren of goods that they haue to
thēselues, and also of goods y they haue with y
Chapter

The xxxix. Chapter. 131

Chapter & brethren, the same diuersity holdeth as appeareth befoze of a Bishop and the Deane and chapter, except that in the case of a maister & brethren the goods shalbe ordered as shalbe assigned by the foundation. And moreouer of a person of a church, vicar, and chauntry priest, or such other, al such goods as they haue, as well such as they haue by reason of y^e parsonage, vicarage, or chauntry, as y^e they haue by reason of their owne person they may lawfully geue and bequeth where they wil after the commō law, And if they dispose part among y^e parishioners & part to y^e buildig of churches, or geue part to y^e ordinary, or to poore mē, or in such other manner as it is appointed by the law of the church, they offend not therein, vnles they think them selues bounden thereto by dutie, & by authoritie of the law of the church, not regarding y^e kings lawes: for if they doe so it seemeth they resist the ordinaunce of God, which hath geuen power to Princes to make lawes. But there as the Pope hath souereintie in temporal thinges as he hath in spiritual thinges, there some say that the goods of priestes must in conscience be disposed as is contained in the said sume, but that holdeth not in this realme, for y^e goods of spiritual mē be tēporal in what manner soeuer they cōe to thē, & must be ordered after the temporal law as the goods of the tēporall men must be. Howbeit if there were a statute made in this case of like effect in many points, as the law of the church is, I thinke it were a right good and a profitable statute.

R. iij.

¶ Who

2/6. vicar, godh

*ye goods of
spirituall
men be
temporall*

The xl. Chapter.

¶ Who shal succede a clerke that di-
eth intestate.

The xl. Chapter.

In the said summe called Rosella in the cha-
piter Clericus quartus the vij. article, is as-
ked this question, who shal succede to a clerke
þ dyeth intestate, and it is answered þ in goods
gotten by reason of the church, the church shal
succeede. But in other goods his kinsmen shal
succeede after the order of the law, & if there be
not kinsmen, then the church shal succede. And
it is there said further þ goods gottē by a Cā-
non secular by reason of his church or prebende
shal not goe to his successor in þ prebend, but
to þ chapit. But where one that is beneficed is
not of the congregation, but he hath a benefice
clerely leparate, as if he be a person of a parishe
church or is a presbiter, or an Archdeacon not be-
neficed by þ chapiter, then þ goods gottē by rea-
son of his benefice, shal goe to his successor and
not to the chapiter, and none of these sayinges
hold place in the lawes of Englande. D. What
is then the lawe if a person of a Church or a
byear in the countrey die intestate, or if a Cānō
secular be also a person & have goods by reason
thereof, & also by a prebend þ he hath in a cathe-
dral church, & he die intestat, who shal haue his
goods. S. At þ cōmō law þ ordinary in al these
cases may administer þ goods & after hee must
commit administratiō to þ next faithful frinds
of

Not 2

of him that is dead intestate that wil desire it, as he is bound to do where lay men that haue goods dye intestate. And if no ma desire to haue administration, then the ordinary may administer & see the debts payd, & he must beware that he pay the debts after such order as is appointed in the comon lawe, for if he pay debts vpon simple contracts before an obligatio he shalbe compelled to pay the debt vpon the obligatio of his owne goods, if there be not goods sufficient of him that died intestate, & though it be iudged in such case that the ordinary may pay pound and pound like, & is to appoition the goods amonge the dettours after his discretion, yet by y^e rigor of the comon lawe, he might be charged to him y^e can first haue his iudgement against him. And farthermore by that is said afore in y^e last chapter appereth, y^e if a bishop y^e hath goods of his patrimony, or a master of a colledge, or a deane of goods that they haue of their owne onely to theselues, die intestate, y^e y^e ordinary shal comit administratio therof as before apereth, & if they make executors then the executors shal haue the ministratio therof, But the heires nor the kinsman by that reason only that they be heires or of kin to him y^e is decessed, shal haue no meddling with his goods, except it be by custome of some countreys where the heires shal haue their lones, Or where y^e children (y^e debts & legacies payde) shal haue a reasonable part of the goods after the custome of the countrey.

note

Justice vpon
a simple con-
tract not
to be paid
before a bond

yt rigor
of y^e comon
lawe

¶ Addition.

R. iij.

¶

The xli. Chapter.

If a mā be outlawed of felony, or be attain-
ted for murder or felony, or that is an al-
cismus, may be slaine by euery
straunger.

The xli. Chapter.

It appeareth in y^e said summe called Summa
Angelica in the xxi. Chap. in the title of Al-
cismus the ij. Paragrafe, y^e he is in an Alcism^s
that wil slay mē for money at the instance of e-
uery mā that wil moue him to it, & such a man
may lawfully be slaine, not only by y^e iudge, but
by euery priuate pson. But it is said there in y^e
iiij. Paragrafe, that he must first be iudged by
the law as an Alcismus or he may be slaine or
his goods seysed. And it is said farther there in
the ij. Paragrafe, that also in cōscience such an
Alcismus may be slaine if it be done througħ a
zele of Justice & els not. Is not the law of the
realme likewise of men outlawed, abiured, or
iudged for felony?

S. In the law of the realme there is no such
law, y^e a man shalbe adiudged as an Alcismus
ne if a mā be in full purpose for a certaine sūme
of money y^e he hath receyued to slay a man, yet
it is no felony, ne murder in y^e law til hee hath
done the act, for intent in felony nor murder is
not punishable by the cōmon law of y^e realme,
though it be deadly sinne befoze god, but in trea-
son or in some other perticuler cases by statute
y^e intēt may be punished. And though a man in
such case kill a mā for money: yet he shal not be
attainted y^e he is an Alcism^s, For as it is said
befoze

before there is no such terme of A scismus in þ
lawe of the realme, but he shall in such case bee
arraigned vpon the murther. And if he cōfesse it
or plead that he is not guilty & is found guilty
by xij. men: he shall haue iudgement of life & of
membze, & shal forsaite his landes and goods. And
like law is if in appeal brought of the murther
if he stand downbe & will not aunswere to the
murther, he shal be attainted of the murther, &
shal forsaite life, lands, & goodes, but if he bee ar-
raigned of the murther vpon an indictment at þ
kings suit, & thereupon standeth dumb and wil
not aunswere, there he shal not be attainted of
the murther, but he shal haue paine fort & dure
(þ is to say) he shal be pressed to death, & he shal
there forfeit his goods, & not his lands. But in
none of these cases (þ is to say) though a man
be outlawed for murder or felony, or be abjured
or that he be otherwise attainted: yet it is not
lawful for any mā to murther him or slay him,
ne to put him in execution but by authority of
the kings lawes. In so much that if a man bee
adjudged to haue paine fort & dure, & the officer
beheadeth him, or on the contrary will putteth
him to pain fort & dure, where he should behead
him, he offendeth the law.

And if an officer which hath authoritie to put
a man to death, may not put him to death but
according to the iudgement, the me thinketh it
should folowe that more stronger a stranger
may not put such a man to death of hys owne
authority wout commaundement of the law.

But if þ iudgement be that he shal be hanged

*appeale
dumb
Dob for
arraignm*

stamf:

*to be put in the prison
way for rap: p. 100 b. 1. m. 1. 1.*

The xliij. Chapter.

in chaines, & the officer hangeth hym in other things and not in chaines, I suppose hee is not guiltye of his death, but some saye he shall there make a fine to the king because he hath not followed the wordes of the iudgement.

*divine
not* Also if a man that is no officer woulde arrest a mā that is outlawed, abiured, or attainted of murder or felony as is aforesaid, & he disobeyeth the rest, & by reason of his disobedience he is slaine I suppose he other shall not be impeched for his death, for it is lawfull vnto euery man to take such persons & to bring them forth y they may be ordered according to the law. But if a capias bee directed vnto the sherife to take a man in an actiō of debt or trespass, there no mā may take the man but he haue authoritie from the sherife. And if any mā attempt of his owne authority to take him, & he resisteth & in the resisting is slaine: hee that would haue taken him is guilty of his death.

Addition.

Whether a man shalbe bounden by the act or offence of his seruant or officer.

The xliij. Chapter.

In the said summe called Summe Angelica, in the title dominus iij. Paragrafe, is asked this questiō, whether a man shalbe charged for his household, And it is saide there that he shal when

When the household offendeth in an office or ministry that the maister is the chiefe officer of, & he hath the worke & the profit of the household. For it shalbe his default y he would chose such servants, for he ought to appoint honest persons but it is said there, y it is to be understood civilly and not criminally, wherby as is said there, he that is a gouernour is bounde for the offence of his officers, and that the same is to be holden of a captaine, that he shall be bounde for the offence of his squires. And an hoste for his geste & such other. Neuertheles it is said there that certaine doctours there rehearsed, said therto y if the office bee an open or publike office, as an office of power or other like: It suffyleth to bring forth him that offended. But it is otherwise if it bee not a publike office, but an hoste or a tauerne or other like. But if the household offend not in y office, the lord is not bound as to the lawe: but in conscience, he is bounde if hee were in default by not correcting them, for he is bound to correct the both by worde & example, & if he find any incorrigible he is bound to put him away except y he haue presumptions that yf he doe so, he wil be the worse, & then he may do that he thinketh best, and he is excused and els not. For to such persons it is sayd Error qui non resistitur: approbatur, (that is to say) an error that is not resisted is approued. And though diuers of the sayings before rehearsed agree with the law of y realme, yet al do not so, & also they y do are to be obserued by authority of y law of y realm, & not by y authority aleged i y said pagrat

Nota

And

The xliij. Chapter.

And therefore I intende to treat somewhat
where the maister shalbe charged by his seruant
or deputy, or by them þe be vnder him in any of-
fice, & where not, & then I entend to touche for
other things where the maister after the lawes
of .þe realme shalbe charged by the act of his ser-
uant in other cases not concerning offices, and
where not.

*under þe charge
gailles þe
charged*

First if a man be committed to warde vpon
arrearages of accompt, & the keeper of the prison
suffereth him to go at large: the an actiō of debt
shal lie against him. And if he be not sufficient,
the it lieth against him þe committed þe keeping of þe
prisoner vnto him, & that is by reason of þe stat
of westm the ij. the xj. chapter.

*most curiously
del. vnto on bailiff
redempt.*

Also if Bailiffes of franchises that haue re-
turne of writs make a false returne, þe pty shal
haue auerment against it aswel of to litle issues
as of other things, as well as he shal haue a-
gainst þe Sherife, but al the punishment shal be
only vpon the bailife, & not vpon the lord of the
franchise, & that doth appeare by the stat made
in the first yere of king Edward the iij. the first
chapt. But if an vnder sherife make a returne
wherupon the sherife shalbe amerced, there the
high Sherife shalbe amerced, for the returne is
made expressely in his name. But if it be a false
returne wherupō an actiō of disceit lieth, in þe
case it may be brought against þe vnder sherife
& see thereof the statute that is called statutum de
male returnantibus breuia.

*right þe charge
under writ.*

*master of prison
deputy.*

Also if the kinges butler make deputies, hee
shal answer for his deputies as for himselfe.

As

As appereth in the statute made in þ̄ xxv. yere
of king Edward the third De prodicionibus the
xxi. Chapter.

Also in the statute that is called Statutum scac-
carii, it is enacted amonge other thinges that no
officer of the Eschequer shal put any clarke vn-
der him, but such as hee will aunswere for. And
for as much as the statute is general: it seemeth
that he shall aunswere as well for an vntruth in
any such clarke, as for an oversight.

Also in the xiiij. yere of king Ed. the 3. the ix.
Chapter, it is enacted, that al Gailes shalbe ap-
pointed againe to the shires, & that the Shirife
shal haue the keeping of them, & that the Shirife
shal make such vndergardeins for þ̄ which they
wil aunswere. And neuertheless I suppose that
if there be an escape by default of þ̄ Gailler, that
the king may charge the gailler if he wil. But it
is no doubt but he may charge þ̄ Shirife by rea-
son of his statute if he wil. But if it be a wil-
full escape in þ̄ Gailler which is felony in him,
the Shirife shal not be boude to aunswere to the
felony, ne none other but the Gailler himselfe, &
they that assented to him.

Also if a man haue a Shirifswike, constable-
ship, or bailswike in fee, wherby he hath þ̄ kee-
ping of prisoners, if he let any to replevine þ̄ he
not repleuissable & therof be assait, he shal lose
the office, &c. And if it be an vnder Shirife, cōsta-
ble, or Barlife that hath þ̄ keeping of the prison,
that doth it without knowledge of the lord, hee
shal haue imprisonment by iii. yeres, and after
shalbe ransomed at the kinges will, as appea-
reth

The xliij. Chapter.

reth in the statuf of west. the first the xv. chap-
ter. And so it appeareth þ in this case, he that is
the lord of the prison is not bound to answer
for the offence of them that haue the rule of the
prison vnder him, but that thei shal haue the pu-
nishment themselves for their misdemeanour.

Also there is a statute made in the xxvij. yere
of king Edward þ ij. the xij. chap. that is cal-
led the statute of the staple, wherby it is orde-
ned þ no marchant, ne none other man shal not
lese their goods for þ trespass, or forfait of their
seruants, vnles it bee by comaundement of his
maister, or that hee offende in the office that hys
maister hath put him in, or els, that the maister
shal be bounde to an answer for the deede of hys
seruant by the lawe marchant, as in some place
it is vled.

Also it is enacted in the xliij. yere of kynge
Edward the ij. the viij. Chapter that wapen-
takes and hundredes, that bee leuered from the
counties shal be adioined againe vnto them, and
that if the shirif holde them in his owne hands,
that he shal put in them, such bailiffs that haue
lands sufficient, & those for which he will an-
swere, & that if he let the to ferme, that they be
let to the ancient ferme, but after it is prohibi-
ted by the statuf of the xxij. yere of king Henry
the vij. the x. Chapter. That no shirif shal let
his Bailiwikes, nor wapentakes to ferme.

And when they be once in the shirifes owne
handes, and the shirifes put in Bayliffes, they
be but as vnder bailiffes to the king and the shi-
rife the high bailife, & they in maner þ shiriffes
seruants

*And del master þ
þ last del þ*

And del bailiffes

seruants & put in onely by him. And therefore by the said statute of king Edw. the iij. he shall answer for the if they offend in their office, but if the shirife let them to ferme: then though the shirife offend the statuf in that doing: yet whether he shalbe charged for their misdeameour in the office or not, is a great doubt to some me, for they say y this statute is onely to be vnder- stand where y bailiwiks be in the shirifs hands, but here they be not so, ne the bailifs be not his seruants, but his fermours. And therefore they say that if the shirife shalbe charged for the: It is by y comon law, & not by y statute aforesaid.

Also in the ij. yere of king Henry the vij. the xiiij. cha. it is enacted, that officers by patent in every court of the kinge, that by vertue of their office haue power to make clarkes in the sayde court shalbe charged, & ssworne to make such clarks vnder the, for whom they wil answer.

Also y hospitalers, & templers be phibit they shall holde no plet that belonge to the kinges courts, vpon paine to yelde damages to the pty grieved, & to make ransome to the king, that the superiours shal answer for their obediencers, as for their owne deede, West. the ij. the xliij. chap.

Also the sergeant of the Ctery shal satisfy al the debts, damages, & executions that shalbe recovered against any that is puruey, or achator vnder him, and that offend against the statuf of xxxij. of Edw. the iij. or against this statute of xliij. of Henry the vij. In case the puruey, or achator be not sufficient, &c. And the party plaintife shal haue a scire facias against the sayde sergeant

la. *English answer*
p. *on bailifs.*

Note yd
ambiguity

offer respond
prudent

The xliij. Chapter.

Sergeaunt in this case to haue execution, as appeareth in the xxiiij. yere of king Henry the sixt the 1. Chapter.

Also if a man be sent to prison vpon a statute marchant by the Maior, before whom p recognisance was taken, & the Gaoler wil not receiue him, he shal answere for p debt if he haue wherewith, & if not then he shal answere that comitted the gaile to him, as appereth in the statute called the statute marchant.

Also if outragious tolle be taken in p towne marchant, if it be the kings towne let to ferme, the king shall take the franchise of the market into his hands. And if it be done by the lord of the towne, the king shal doe in likewise. And if it be done by the Baylife, vnknowing p lord, he shal yelde againe as much as he hath taken, and shal haue imprisonment of xl. daies. And so it appereth p the lord in this case shal not answere for his Baylife, west. the first p 30. chapt. And in al the cases before rehearsed, where p Superior is charged by the default of him that is vnder him, hee in whose default his superior is so charged, is bounde in conscience to restore him p is so charged through his default. Except the case before rehearsed of the hospitellers, for all that the obediencer hath, is the superiours if he will take it. And therefore what recompence shalbe made by the obediencer in that case, is all at the will of the superior. And now we intend to shew thee some pticuler cases, where the master after the lawes of p realme shalbe charged by the act of his servant, Bailife, or deputy, and where

The xliij. Chapter.

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where not, and so for to make an ende of this Chapter.

¶ First for trespassse of battery, or wrongfull entre into landes or tenementes: ne yet for felony or murther, the master shal not be charged for his seruaunt, vnlesse hee did it by his commaundement.

¶ Also if a seruaunt bozowe money in his masters name, the master shal not be charged with it, vnlesse it come to his vse, and that by his assent, and the same lawe is if the seruaunt make a contract in his masters name, the contract shal not binde his master, vnles it were by his masters commaundement, or that it came to the masters vse by his assent. But if a man sende his seruaunt to a faire or market, to buy for hym certaine things, though he commaunde him not to buy them of no man in certaine, and the seruaunt doth according, the master shalbe charged, but if the seruaunt in that case buy them in his owne name, not speaking of his master, the master shal not be charged, vnles þ things bought come to his vse.

¶ Also if a man send his seruaunt to þ market with a thing which he knoweth to be defectiue, to bee solde to a certaine man, and hee selleth it to him: there an action lieth against the master, but if the master biddeth him not sell it to any person in certaine, but generally to whom hee can. And he selleth it according, there lieth no action of disceipt against the master.

¶ Also if the seruaunt keepe the masters fyre negligently, whereby his masters house is brett

S. i.

and

maister for a charge
for the same The xliij. Chapter.

and his neighbours also, there an action lieth a-
gainst the maister. But if the seruant beare fire
negligently in the streate, and thereby the house
of an other is burned, there lieth no action a-
gainst the maister.

Common
Also if a man desire to lodge with one, that is
no common hosteler, and one that is seruant to
him that he lodgeth with, robbeth his chamber,
his maister shall not bee charged for that rob-
bing, but if he had bene a common hosteler, hee
should have bene charged. *com. 9*

Also if a man be gardein of a prison wherein
is a man, is condemned in a certayne summe
of money, & an other that is in prison for felo-
ny, and a seruant of the gardeine that hath the
rule of y^e prison vnder him, wilfully letteth the
both escape, in this case the gardeine shall aun-
swere for the debt, and shall paye a fine for the
escape of the other, as for a negligēt escape, and
the seruant only shalbe put to aunswere to the
felony, for the wilfull escape.

maister for a charge
for the same
Also if a man make an other his generall re-
cepuour, and that recepuour recepueth money
of a creditour of his maister, and maketh hym
acquittance, & after payeth not hys maister, yet
that payment dischargeth the creditour, but if
the creditour had taken an acquittance of hym
without paying him his money, that acquittance
only were no bar to the maister, vnles hee made
him receiuor by writing, and gaue him autho-
rity to make acquittances, and then the autho-
rity must be shewed. And if the credytoure in
such case by agreement betwene the recepuour
and

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not accept
Dof. v. b. 138
master.

and him, deliuered to the receiuour a horſe or an other thing in recompence of the debt, that deliuerie diſchargeth not the creditour, vnleſſe it be deliuered ouer vnto the maſter, and hee agree to it. For the receiuour hath no ſuch power to make no ſuch cōmutation, but his maſter geue him ſpecial commaundement thereto.

note for
deliuerie
to be

Alſo if a ſeruaunt ſhewe a Creditour of his maſter, that his maſter ſent him for his money, and he payeth it vnto him, that paymet diſchargeth him not, if the maſter did not ſend him for it in deede, except that it come after vnto the biſ of the maſter by his aſſent.

Alſo if a man make a bailife of a manor, & after the lord of whom the manor is holdē graūt the ſeignoury to an other, & the bailife after payeth the rent to the graūtee, that payment of the rent counteruaileth no attournment though it were by fine, ne ſhall not bynde his maſter, till he attourne himſelfe, but if the lord of whom the land is holden diſſeiſed one of the ſeignoury, & the bailife payeth the rent to the heire of the lord, this is a good ſeiſon to the heire, though the baylife had no cōmaundement of his maſter to pay it. For it belōgeth to his office to pay rēts ſeruice, but not rent charge, as ſome men ſay.

bailif del ma

Bailif bound
to pay rent
to the heire

Alſo an encroachment by the baylife ſhall not bind the maſter in auowry, if he had no cōmaundement of the maſter to pay it. Alſo if there be lord, meſne, and tenant, & the tenaunt holdeth of the meſne as of his manor of D. the meſne maketh a bailife, and after the tenaunt maketh a feoffment, the feſſee tendeth notice to the bailife

D. 4.

and

The xliij. Chapter.

and hee accepteth his rent wth the arrearages, this notice shal not binde the lord, ne compell him to alter his auowry, for y^e office of a bailiffe stretcheth not thereto, but hee must haue therein a special commaundement of his maister.

222.6.
For the same
Doth we find
¶ Also if a seruant ride on his maisters horse to doe an errant for his maister into a Towne y^e hath authority to make attachements of goods vpon plaints of debt &c. and there vpon a plaint of debt made against the seruant, the maisters horse is attached by the officers, thinking that the horse were his owne, and because y^e seruant appereth not, the officers seise the horse as forfeit, in this case the lord shall haue an action of trespass against the officers, & this attachement for the debt of his seruant, shal not binde him, &c. but that an hoste or keeper of a tauerne shalbee charged for their guesstes, vntill it bee done by their assent, or commaundement. I doe not remember that I haue read it in the lawes of England.

Addition.

¶ Whether a villaine, or a bond man may geue away his goods.

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¶ It appeareth in the said summe, called *Suma angelica* in the title *donatio prima* the ix. Paragrase, that a bond man, nor a religious man, nor a Monke, ne such other that hath nothing in proper, may not geue, but it bee by licence of their superiour, but that sayinge is not as it is
saide

said there, to be vnderstande of Religious persons y^e haue lawfull ministracion of goods, for if they geue with a cause reasonable, it is good, but without cause they may not.

¶ Also if they by the licence of the Prelate or the counsaile of the more part of the court abide at schole or goe on pilgrimage: they may geue as other honest scholars & pilgrims be reasonably wont to do, & they may also geue almes where there is great neede, if they haue no time to aske licence.

¶ Also if they see one in extreme necessity they may geue almes though their superiours prohibite the, for then all thinges be in com^{on} by the lawe of god. And therefore they be bounden for to do it, as appeareth in y^e aforesaid summe called *Summa angelica* in the title *Elemosina*, y^e vi. Paragraphe. Doth not the lawe of Englands agree with these diuersities: S. For as much as the questi^{on} is onely made whether a villaine or a bonde man may geue away his goods or not: And it seemeth that after the foresaid Summe, in the title which thou hast before rehearsed, that he ne none other that hath no property may not geue, whereby it appeareth that the said Summe taketh it, y^e a bond ma shoulde haue no property in his goods, & that therefore his gift shoulde be void: I shal somewhat touch what property and what authoritie a villaine hath in his goods after the lawe of the Realme, and what authoritie the Lord hath ouer the. And I will leaue the diuersities that thou hast remembred before of religious persons

S. in.

long

The xliij. Chapter.

to them that list to treat further therein hereafter.

First if a villaine haue goodes eyther by his owne proper buying and sellinge, or otherwise by the gift of other men, hee hath as perfecte a propertie, & also as whole interest in them, and may as lawfully geue them away as any free man may. But if y^e lord seyle them before his gift: then they be the lords, & the interest of the villaine therein is determined.

Also if the Lord seyle parte of the goodes of his villayne in the name of all the goodes that the villayne hath or shal hereafter haue, that seylure is good, for all the goodes that hee hadde at that tyme of the seylure. But if goodes come to the villaine after the seylure hee may lawfully geue them away notwithstandinge y^e said seylure,

Also if the Lord claime al the goodes of the villaine, & sealeth no part of them, that seylure is void, and the gift of the villaine is good notwithstanding that seylure.

Also if a manne be bounde to a villaine in an Obligation in a certaine summe of money, and the lord seileth the obligation, then y^e obligatio is his, but yet he can take no action thereupon but in the name of the villaine, and therefore if the villaine release the debt, the lord is barred by that release.

Also if a woman be a niefe, and she marieth a free man, y^e goodes immediatlye by the mariage be the husbands, and the lord shal come to late

*del bond villaine
for donat alwys
to lord*

*only on the
debt of the lord*

*In bond
villaine
before bond*

or paid before bond

del obligatio

*del villaine
del villaine
bond bar
regio*

to make any seysure, and if the husband in that
case maketh his wife his executrix and dieth, if
the wife taketh y^e same goods againe as execu-
trix to her husbände, yet it shall not bee lawfull
for the lord to take the same from her, though she bee
a niese as she was before the mariage. *26 Hen. 7. 8.*

Also if goodes bee geuen to a man to the vse
of a villaine, and the lord seyleth those goodes,
þe seisure after some men is good by the statute
made in the xix. yere of king Henry the seventh
whereby it is enacted that the lord shall enter
into landes whereof other persons be seised to þe
vse of his villaine, & they say that the same sta-
tute shalbe vnderstande by equitie of goodes in
vse, as well as of landes in vse.

Also if a villeine be made a priest, yet neuer thelesse the lord may selle his goodes & landes as he might before. And until the seller he may alie them and giue them away as he might before he was priest. And in this case the Lord may order him, so that he shal do him such seruice as belongeth to a priest to doe, before anye other, but he may not put him to no labour nor other busines but that is honest and lawfull for a priest to doe.

Also if a bilaine enter into religion in hys
yere of yowthe, he may dispose his goodes as hee
might haue done before he took hys habite vpon
him. And in like wise hys lord may segle his goodes
as hee might haue done before, but if hee after
make executours, & be professed. And hys execu-
tours take the goodes to the performaunce of
his last will & testament.

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the swil, then the lord may not seyle the goodes
though the executors haue them to p^rperfour-
uance of the swil of him that is his billein, nor
in that case the lord may not seyle his bodye ne
put him to no maner of labour, but must suffer
him to abide in his religion vnder the obediēce
of his superiour as other religious persons do
that be not bondemen: And the lord hath no re-
medy in that case for losse of his bondman, but
onely to take an action of trespas against hym
that receiued him into religion without his li-
cence, and theruppon to recouer damages as shall
be assessed by xij. men. Many other cases there
be concerning the gift of the goodes of a billeyne,
wherefore I will speake no more at this time,
for this that I haue said suffiseth to shew that
the knowlege of the kinges lawe, is right ex-
pedient to the good order of conscience concer-
ning such goodes.

If a clarke be promoted to the tytle of hys
patrimony, & after selleth his patrimony &
after falleth to pouerty, whether shal
he haue his title therein or not.

The xliij. Chapter.

In the said summe called Rosella in the title
Clericus quartus, the xliij. article it is as-
ked if a Clerke be promoted to the title of hys
patrimony, whether he may aliē it at his plea-
sure, & whether in that alienation the solēpny-
tie needeth to be kept that is to be kept in alie-
nation

nations of thinges of the church, and it is answered there y^t it may not bee aliened no more then the goodes of a spirituall benefice, if it bee accepted for a title, and expressely assigned vnto him, so that it should goe as into a thing of the church, except hee haue after an other benefice whereof he may liue. But if it be secretly assigned to his title, some agree it may be aliened, & in this case by the lawes of the realme, yt may bee lawfully aliened whether it bee secretly or openly assigned to hys title, for the ordinary ne yet y^e party himselfe after the old customes of the realme, haue no authoritie to binde any inheritance by authoritie of the spiritual lawe, and therefore the lande after it is assigned & accepted to be his title, standeth in the same selfe case to be bought, sold, charged, or put in execution as it did before. And therefore it is somewhat to be maruailed that ordinaries wil admit such land for a title, to the intēt that he that is promoted should not fall to extreme poverty, or goe openly a begging, without knowing howe the common lawe wil serue therein, for of mere right al inheritance within this Realme ought to be ordered by the kings lawes, and inheritance cannot be bounden in this Realme but by fine, or some other matter of record, or by feoffment or such other, or at least by a bargain that chaungeth an use. And ouer that to assigne a state for terme of life to him that hath a fee simple before, is hold in the lawes of Englands, notwithstanding it be by such a matter that it receiue by way of conclusion or stoppel, and in this case is no such

Note

The xliiij. Chapter.

such maner of cōclusion, and therefore all that is done in such case in assigning of the said title is void. Also there is no interest ꝑ a man hath in any maner landes or tenements for terme of life, for terme of yeares or otherwise, but that he by the law of the realme may put away hys right therein if he wil. And then when this mā alieneth his lande generallie, it were against the law of the realme that any interest of such a title should remayne in him againste his owne sale, & there is no diuersitie, whether ꝑ assignement of the title were open or secret, and so the title is void to al intentes. And in likewise if a house of relyggyon or any other spirituall mā that hath granted a title after the custome p̄sed in such titles, sell all the landes and goddes ꝑ they haue, that salz in the lawes of England is good as against ꝑ title, & the buyer shall neuer be put to answer to the title. Also some say that vpon the common titles that be made dayly in suche case, that if hee fall to pouertie that hath the title, hee is without remedye, for they be so made that at ꝑ common law there is no remedye for them, and if he take a suit in the spiritual court, many mē say that a prohibition or a premunire lieth. And therefore it were good for ordinaries in such case to counsaile w̄ them that be learned in the law of the realme to haue such a forme deuised for making of such titles, that if neede be, would serue them that they bee made vnto, or els let thē be promoted without any title, and to trust in God that if they serue him as they ought to do, he wil provide for thē
to

to haue sufficient for the to liue vpon. And beside these cases y^e I haue remembred before, there be many other cases put in the saied summes for the well ordering of conscience, that as me thinketh are not to be obserued in this realme, neither in lawe nor in conscience.

W. Doest thou the thinke y^e their was default in them y^e drew the said summes & put therein such cases & such solutiōs y^e as thou thinkest hurt conscience, rather the to geue any light to it, specially as in this realme.

S. I thinke noe default in them, but I thinke y^e they were right wel and charitably occupied to take so great payne and labour as they dyd therein, for the wealth of the people & clearing of their conscience, for they haue thereby geuen a right great light in conscience to al countreys where the lawe Ciuil and the lawe Cannon, be bled to temporal thinges. But as for y^e lawes of this realme they knew the not, ne they were not bound to know them, & if they had known the, it would little haue holpē the for y^e countreys that they most specially made their treatises for, and in this countrey also they be right necessary and much profitable to all men for such doubts as rise in conscience in diuers other maners not concerning the lawe of the realme. And I marnaile greatlye that none of the that in this Realme are now bounden to doe that in them is to keepe the people in a right iudgement, and in a clearenesse of conscience: haue done no more in tyme passed to haue the lawe of the Realme knowen, then they haue done,
for

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for though ignorance may sometime excuse, yet the knowledge of the truth, and the true iudgement is much better, & sometime though ignorance excuseth in part, it excuseth not in all, & therefore me thinketh they did very wel if they would yet be callers on to haue that point reformed as shortly as they could. And now because thou hast well satisfied my minde in many of these questions that I haue made: I purpose for this time to make an ende. D. I pray thee yet shew me or y^e thou make an end moe of these cases, that after thine opinion be set in diuers booke of learning of conscience, that as thou thinkest for lacke of knowledge of y^e law of the realme, doe rather blinde conscience then geue a light vnto it, for if it be so, then surely as thou hast said it would be reformed, for I thinke verely the lawes of the Realme in many cases must in this Realme be observed as well in conscience as in the iudiciall courtes of the realme, S. I wil with good wil shewe to thee shortly some other questions that be made in the sayed summe to geue thee, & other occasion to see therein the opinions of the said summes, and to see farther therupon how the opinions & the lawes of the Realme do agree together. And yet beside these questions that I intend to shewe vnto thee, there be many other questions of y^e sayd summes y^e had as great neede to bee more plainly declared according to the lawes of the realme as those that I shal shewe thee hereafter or as I haue spoken of before, but to the cases that I shal speake of hereafter I wil shewe thee nothinge

thing of my conceipt in them, but will leue it to other that will of charity take some further paine hereafter in that behalfe.

¶ Diuers questions taken out by the Student of the sūmes, called Summa Rosella, & Summa Angelica, which he thinketh necessary to be looked vpon, & to be seene howe they stande and agree with the laswe of the Realme.

The xlv. Chapter.

The first question is this, whether a custome may breake a laswe positive, Summa Rosella, titulo consuetudo Paragrafe xlv.

The seconde is if a man attainted or banished be restored by the prince, whether shall that restitution stretch to the goods, Summa rosella in the title Dampnatus in principio.

Item if a man be outlawed of felony, abiured or attainted of murther, or felony, or hee that is an ascismus may bee slaine by straungers, & see like matter thereto, Summa Angelica, in p tyle Ascismus Para. xl.

This question is somewhat answered to, in a newe addition, as appeareth before in the xlv. Chapter.

Item whether the maister shal bee bounde by the act, or offence of his seruant, or officer, Summa

The xlv. Chapter.

ma Angelica in the title dominus Para. iij.

This question is answered to in a new addition, as appereth before in the xlv. Chapter.

Item whether a villaine may geue away his goods, Summa Angelica, in the title donatio prima. Para. ix.

This question is answered to in a new addition, as appereth before in the xlv. Chapter.

Item whether an Abbot may geue &c. Summa Angelica, in the title donatio j. Para. x. & xxxix.

Item whether a woman couert, may geue away any good. And it is answered, Summa Angelica in y title donatio j. Paragrafe xi. that she may not, wout she haue goods beside her dowry, but onely in almes.

Item if a man do treason, whether his gift of goods after, before attaindre bee good, Summa Angelica, in the title donatio j. Para. xij. and it seemeth there nay, and looke Summa Angelica in the title alienatio Para. xxij.

Item if a man wittingely make a contract betweene two kinsfolke, or other that may not lawfully mary together, whether hee hath forfeit his goods, Summa Angelica, in the title donatio j. Para. xij.

Item whether the father may geue to y sonne Summa Angelica, in the title donatio j. Para. xix. and Summa Rosella, in the title donatio ij. Para. xlv.

Item whether a man may geue aboue v. l. s. absque insinuatione Summa Angelica, in the title donatio prima. Para. xx.

Item whether a gifte shalbe anoyded by an
ma

ingratitude, *Sūma rosella*, in the title donatio j. Para. xviij. & xxix. and there it is said that the gift is void by the law of nature, & looke *Sūma Angelica*, in the title Donatio prima Para. xliij. & xlv.

Item where any gift betweene the husbände and the wife may be good, and it is said yea, whē the husbände geueth it, *causa remunerationis*, *Sūma rosella*, in the title donatio j. Paragra. xxxij.

Item if a man make a will, and enter into religion, whether he may after reuoke the will, & it is said, that Friers minours may not, and other may, *Sūma Rosella*, in the title donatio prima. Para. xxxv. in fine.

Item if a man geue an other a towne with al the rightes that he hath in the same, whether by patronage &c. and the tithes passe. *Sūma rosella*, in the title ecclesia j. Para. lvi.

Item whether al that is bought with the money of the church be the churches. *Sūma Rosella*, in the title ecclesia j. Para. viij.

Item if a gift made to a monastery may bee annoyded by that the geuer hath children after y^e gifte, *Sūma Angelica*, in the title Donatio j. Para. xliij.

Item if a man buy a thing vnder the half price, whether he be bound by the lawe to restore, &c. *Sūma rosella*, in the title emptio, & venditio. Para. vi.

Item whether a common thiefe vel communis depopulator agrorum may abiure, *Sūma Rosella*, in the title ciuitas ij. in principio. Et habetur

The xlv. Chapter.

betur ibi in fine quod licet leges excipiant plures personas
tum per ius canonicum legibus derogatum est.

Item whether a man shal take the church for
great enormous offences that is not murther,
nor felony. Summa Rosella, in the title Emu-
nitas. ij. Paragrafe iij. xj.

Item if a man take one in the high way, and
drawe him out, & there beateth him, whether he
shal haue y punishment y is ordained for them y
strike one in the highway. Summa Rosella, in
the title Emunitas ij. Paragrafe. vij.

Item whether he that taketh the church may
after for y offence be iudged to death. Summa Ro-
sella, in the title Emunitas ij. Paragrafe viij.

Item whether the bishops palles be sanctu-
ary Summa Rosella, in the title Emunitas ij.
Paragrafe xiiij.

Item whether the dignity of the Bishop, or
priesthode discharged bondage. Summa Rosella
in the title Episcopus in principio.

Item whether a clerge is bounde to pay any
impositions, or tallages, for his patrimony, or
otherwise, Summa Rosella in the title excommu-
nicatio i. diuisione oct. Para. iij. and v. & vi. &
diuisione nona. Paragrafe i.

Item if it were ordeined by statute, that if a
man sell &c. he shal geue to the kinge ij. d. whe-
ther a clerge be bounde to geue it if he sel of his
prebend. Summa Rosella in the title excommu-
nicatio i. diuisione nona. Para. iij.

Item if it bee ordeined by statute, that there
shal not be laied vpon a deade person, but such
a tertayne clothe, or thus many tapers, or can-
dels

dels, whether the statute bee good & it is left for a question. *Sūma rosella* in the title *excomunicatio* i. diuisione xbiij. *Para.* viij. in fine.

Item if a man make a lease of a Mill for tme of yeres, & it is agreed y^e the lessee shal grind the lessor tolle free during the tme, aft^r the lessor is made a Erie or a Duke, & hath greater household thē before, whether y^e lessee bee wⁱde there, &c.

Sūma rosella in the title *familia* *Para.* v.

Item if a maister will not pay his seruants wages y^e hath serued him faithfully, whether y^e the servant may take secretly as much goods of the maisters, &c. & if he doe whether hee be wⁱde to restitution *Sūma rosella* in the title *familia* *Para.* vi.

Itē things immouable of y^e Church may not be geuen. *Sūma rosella* in y^e title of *feodū*. *Para.* i. & see there in principio what *feodu* is

Item whether the sonnes bastardest, and the sonnes lawfully begottē shal inherite together *Sūma rosella* in the title *filius* *Para.* i.

Item whether father and mother, may succede to their bastards, *Summa Rosella* in the title *filius* *Para.* iij.

Itē whether the father may leaue any of his goods to his bastardest. *Sūma Rosella*, in the title *filius* *Para.* v. & *Sūma Rosella* in the title *societas* *Para.* xxiij.

Item whether the offence of the father shall hurt the sonne in temporal things. *Sūma rosella* in the title *filius*.

Itē if a man geue all his landes, and goods to his children, whether a bastarde shall haue a-

The xlv. Chapter.

ny part *Sūma rosella* in y title *filius*. *Pa. xxij.*

Itē to whom treasour found belongeth. *Sūma Rosella* in the title *furtū* *Para. xi.*

Itē if a deare, or other wilde beaste that is so sore hurt that hee may be taken, cometh into an other mans groude, whether it be his that ow-
eth the groude, or his that strake him, *sūma ro-*
sella, in the title *furtū* *Para. xij.*

Item whether theft be in a litle thing as wel
as in a great thing, *Summa rosella*, in the title
furtū *Para. xiiij.*

Itē what paine a thiefe shal haue, *Summa*
rosella in the title *furtū* *Para. xxij.*

Itē y if goods of deade men go to the heires,
and that of dampned men. *s. De terris*, *Sūma*
rosella in the title *hereditas* *Pa. i.*

Itē whether a man shalbe said guilty of mur-
ther by comaundement, counsaile, or assent, *sū-*
ma rosella, in the title *homicidiū* *ij. per totum*, &
like matter is *homicidiū* *iiij. in principio*, & di-
uers other cases.

Itē a mā maketh a priuy cōtract with a wo-
man, & after hath a childe by her, & after married
an other woman & hath a childe, she not know-
ing of the first contract, which of the children
shalbe his heire? *Sūma rosella* in the title *Il-*
legittimus *Pa. iij.*

Itē whether the Pope may legitimate one
to temporal things, and to succede, *Sūmaro-*
sella in the title *Illegittimus* *Pa.*

Item if goods be founde that were left of the
owner as forsake, who hath right to the. *Sū-*
ma rosella in the title *inuēta* *Para. ij.* And loke

Summa

Sūma rosella in þ title fartum Pa. xviij. And thus I make an end of these questiōs, & because thou desiredst mee in þ xxxj. Chap. to shew thee somewhat where ignorance excuseth in the law of the realme & where not, I wil answer somewhat to thy question, & so comit thee to God.

¶ Where ignorance of the law excuseth in the lawes of England, and where not.

The xlvj. Chapter.

Ignorance in the lawe though it be innuincible doth not excuse as to the law but in few cases, for every mā is toūd at his peril to take knowledge what the law of the realme is, aswel the law made by statut as þ cōmō law, but ignorāce of the deede, which may be called the ignorāce of the truth of þ deede, may excuse in many cases. **D.** I put case that a statute penal be made, & it is enacted that the statut shalbe proclaimed before such a day in every shire & it is not pclaimed before þ day, & after þ day a mā offendeth against the stat, shal he rū in þ penalty. **S.** I think yea, if there bee no farther words in þ statut to help him, that is to say, that if þ proclamation be not made that no man shalbe bōūde by the statute, & the cause is this, there is no statut made in this realme, but by the assent of þ lordes spiritual, & temporal, & of al the cōmons, that is to say, by þ knights of the shire, citizes, & burgesles that be chosen by assent of the cōmons, which in þ parliament represent the estate of the whole cōmons.

C. ij.

And

The xlvj. Chapter.

And every statute there made, is of as strong effect in the lawe, as if al the commons were there present personally at the making thereof, & lyke as there neded no proclamation, if al were there present in their owne person, so the lawe presumeth there nedeth no proclamation, when it is made by their authority, & then whē it is enacted that it shalbe proclaimed, &c. that is but of favour of the makers of the statute, & not of necessity, & it cannot therefore bee taken, that their intēt was that it should be void if it were not proclaimed. Nevertheless some bee of opinion that if a man before the day appoynted for the proclamation offend y^e statute y^e hee shoulde not in that case be punished, for they say y^e the intēt of the makers of y^e statute shalbe taken to bee, y^e none should bee punished before the day, which is a doubt to some other, but admit it be as they say, that he shalbe excused, yet he is not excused by the ignorance of the lawe, but because y^e intēt of the makers excused him. D. It is enacted in the vij. yere of king Ric. the ij. the vij. Chapter, that every shirife shal proclaim the statute of Winchester. three times every yere, in every market towne, to thintent the offenders shal not be excused by ignorance, and it seemeth by those words that if no proclamation be made, that the offender may be excused by ignorance. S. Some take the intent of that statute to bee, that the people by that proclamation should haue knowledge of that statute of Winchester, to the intent that the forfayture therein may be taken aswell in conscience as in lawe, and some take the

the statut to be of such effect as thou speakest of that is to say, that no forfayture should growe vpon the statute of Winchester against the that were ignorant but proclamation were made according to the saide statute of Richard. And if it be so taken, y^e statute of Winchester is of smal effect against most part of y^e people, for certayne it is that the said proclamation is not made: but admit it be as they say, then they y^e be ignorant be excused by the said particuler estatut, specially made in that case & not by the general rules of the lawe, and sometyme in dyuers statutes penalles they that be ignorant be excused by y^e selfe statut as it is vpon the statute of Richard the ij. the xij. yere, the seconde statute and the last Chapter where it is enacted y^e if any parson take a benefice by p^ruision y^e he shal be banished the realme and forfait all his goods, and that if he be in the realme, he auoide within vij. weekes after he hath accepted it, and that none shal receiue him y^e is so banished after the sayd vij. weekes v^uo like forfeiture if he haue knowledge, & so he that hath no knowledge is excused by the expresse words of the statute. And in like wile he y^e offendeth against Magna charta is not excom^medged but he haue knowledge that it is prohibite y^e he doth. For they be onely excomm^medged by y^e sent^ece called (Sententia lata super cartas) y^e doth, it wilfully, or that doth it by ignorance, & correct not semselues w^yth in xv. daies after they haue warning. And some time they that be ignorant of a statute be excused fro^m y^e penalty of the statut because it shal be

The xlvj. Chapter.

taken that the intēt of the makers of the statute was y none should be bound but they that haue knowledge but that any mā shalbe discharged in the lawe by ignorance of the lawe onely for that he is ignorant. I know fewe causes except it might be applied to infants that bee in their infancy & within yerres of discretion, for if ignorance of the lawe should excuse in y law many offenders would pretende ignorance. W. Shal an infant that hath discretio & knoweth good fro euil be punished by a penal statute y he is ignorant in? S. If the statute be that for the offence he should haue corporall payne, I thinke he shalbe excused and haue no corporall pain, but I suppose y that is not for y ignorance for though he knew the statute & willingly offended, yet I thinke he shall haue no corporall pain, as where he pleaded iointenancy by dede y is found against him, or if he plead a record in assise & faileth of it at his day, but y is because the law presumeth that it was not thintēt of y makers of the statute that he should haue that punishment, but if he be of yerres of discretio to knowe good fro euil, whether he shall then forfeit y penalty of a penal statute it is more doubt for it is comonly holden, y if an infant had not ben excepted in the statute of foreiudgement, y the foreiudgement should haue bound him, & so shall his cesser, & his leuying of a crosse against the statute, or if he be a gardein of a prisō & suffer a prisoner escape he shal pay y debt because y statute be general, & if he should by the statute be bound win age like realty wil y he may by a stat
penal

penal losse his goods. D. If an infāt do a murder or a felony at such yeares as he hath discretion to know the law, shal he not haue þ punishment of the lawe as one of full age? S. I think yes, but that is by an old maxime of the law for eschewing of murthers and felonyes, & so it is of a trespass, but these tales rñe not vpon the ground of ignorance, but with what act infants shalbe punishable or not punishable for the tenderneſs of their age, though they be not ignorant. D. Bee not yet knightes and noble men that are bounde most properly to let their study to acts of chivalry for defence of the realme, & husbandmen that must vse tillage & husbandry for the sustenance of the comunalty, and that may not by reason of their labour put theſelues to know þ law, be discharged by ignorance of the law? S. No verily, for sith all ſwere makers of the statute, the law presumeth that al haue knowledge of þ that they make as it is said before: & as they be bound at their perill to take knowledge of the statute that they make: so be al them that come after them. And as for knightes & other nobles of the realme, me ſemeth þ they should be bound to take knowledge of þ law as wel as any other wñ þ realme except the þ geue theſelues to þ study & exercise of the law, & except spiritual iudges þ in many cases be bound to take knowledge of the lawe of þ realme as is said before in þ xvj. chap. For though they be bound to acts of chivalry, for defence of þ realme, yet they be bounden also to þ acts of iustice, and that as it ſemeth more then
C. liij. other

The xlvj. Chapter.

other be by reaso of their great possessions and
 authoritv. And for þ wel ordering of þ tenantz,
 seruantz & neighbors, þ many times haue neede
 of their help, & also because they be oft called to
 be of þ kings counsel, & to the general counsaile
 of þ realme, where their counsaile is right expedi-
 ent & necessary for þ comon welth, & therefore if
 þ noble mē of this realme would see their chil-
 dze brought vp in such maner, that they should
 haue learnig & knowledg, more thē they haue
 comonly bled to haue in tyme past, specially of þ
 groundz & principals of the lawe of the realme,
 wherein they be inherite though they had not þ
 high cunning of þ whole body of the lawe, but
 after such maner as Wy. Fortescue in his booke
 he entitleth the booke (*de laudibus legum Anglie*)
 aduertiseth the prince to haue knowledg of þ
 lawes of this realme, I suppose it would be a
 great helpe hereafter to þ ministratiō of iustice
 in this realme, A great iuertv for themselves, & a
 right great gladnes to al the people, for certain
 it is, the more parts of the people woulde more
 gladly heare þ their rulers & gouernors etēded
 to order thē w swifedōe & iustice, thē w power
 & great retinnes. But ignorance of þ deede ma-
 ny times excuseth in þ lawes of England, & I
 shal shortly touche some cases thereof to shewe
 where it shal excuse, & where it shal not excuse,
 & then the reader may adde to it after his plea-
 sure & as he shal thinke to be conuenient.

Certaine cases & grounds where ignorance
 of the deede excuseth in the lawes of
 England, and where not.

Che

The xlvij. Chapter.

If a man buy a horse in open market of him þ *per deo 8040.*
 in right hath no perty in him, not knowing
 but that he hath right, he hath good title & right
 to the horse and the ignorance shall excuse him.
 But if he had bought him out of that open mar-
 ket, or if he had knowe þ the seller had no right
 the buying in open market had not excused him. *part.*
 Also if a man retaine another mans seruāt not *retayner do terna*
 knowing þ he is retained in him, the ignorance
 excuseth him both for the offence that was at þ
 common law against the maxime that prohibited
 such retaining of another mans seruāt. And also
 against the statut of xxxij. of Edward þ third,
 wherby it is prohibyt vnder paine of imprisonment
 that none shal retaine no seruāt that departeth
 within his terme without licence or reasonable
 cause, for it hath bene alway taken, that þ intent
 of the makers of the said statute was that they
 that were ignorant of the first retinour should
 not runne in any penalty of the statut. And the
 same lawe is of him that retayneth one that is *ret deo 8041.*
 ward to another, not knowing that he is his
 ward. And if homage be due and the tenant af-
 ter that the homage is due maketh a feoffment, *80 mugo.*
 & after the lord not knowinge of the feoffment
 distraineth for the homage, in that case that ig-
 norance shal excuse him of damages in a Reple-
 vin though he cannot answer for the homage, but
 if he had knowen of the feoffment, he shoulde
 have yeldeo damages for the wrongfull taking.
 Also if a man be bound in an obligation that he
 shal

The xlvij. Chapter.

shal repaire the houses of him that he is bound to by such a certain time as oft as nede shal require, & after y^e houses haue nede to be repaired but he that is bound knoweth it not, that ignorance shal not excuse him for he hath bounde himself to it, & so he must take knowledge at his peril, but if the condition had bene y^e he shoulde repaire such houses as he to whō he was bound should assigne, & after he assigneth certain houses to be repaired, but he that is bound hath no knowledge of that assignement, that ignorance shal excuse him in the law, for he hath not bound himself to no reparation in certaine, but to such as the party wil assigne, and if he none assigne, he is bounde to none, & therfore alth^o he y^e should make the assignement is priuy to the dede, he is bounde to geue notice of his owne assignemēt, but if the assignement had bene appointed to a straunger then the obligour must haue taken knowledge of the assignement at his peril. Also if a man buy lāds whereūto another hath tyle which the buyer knoweth not, y^e ignorance excuseth him not in the law no more then it doth of goods. Also if a servant come with his masters horse to a towne y^e by custome may attach goods for debt, & vpon a plaint against the servant, an officer of the towne, by information of the party attacheth the masters horse thinking that it were the servants horse, that ignorance excuseth him not, for when a man will do an acte as to enter into lande, seyse goodes, take a distresse or such other, he must by the lawe at his peril see that that he doeth be lawfull^y done

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done as in þe case befoze rehearsed. And in like-
 wise if a sherif by a repleui deliuer other beasts
 the were distrained, though the party that dis-
 trained shewod him they were the same beasts
 yet an actiō of trespass lieth against him, & igno-
 rance shal not excuse him, for he shalbe cōpelled
 by the law as al officers cōmonly be, to execute
 the kings swrit at his peril according to the te-
 nour of it, & to see that the act that he doth be-
 lawfully don. But otherwise it is after sōe mē
 if vpon a sūmons in a Precipe quod reddat the
 sherife by information of the demaūdant sūmo-
 neth the tenant in, another mā's lāds, thinking
 it for the tenants land, there they say he shalbe
 excused, for in that case he doth not seise þe land
 ne take possession in the land, but only doth so-
 mon the tenāt vpon þe land, & the swrit cōmaū-
 deth him not that he shal somon the tenāt vpon
 his owne lād, but generallly that he shal somon
 him, and knoweth not in what land and the by
 an old maxime in the law it is taken þe he shal
 sūmon him vpon the land in demaund, & there-
 fore though hee mistake the land & be ignorant
 of it, yet if the demaūdaunt enforme him that
 that is the lād that he demaūdeth that suffiseth
 to the sherife as to his entre for the sūmoning
 as they say, though it be not þe tenāt. And here
 I make an end of these questions for this time.
 D. I pray thee yet oz we depart take a little
 more paine at my desire.
 S. What is that. D. That thou wouldest
 shew me thy minde in diuers cases of þe lawe of
 þe realme, which as me semeth had not so clerely
 with

The xlviii. Chapter.

With conscience as they should do. And therefore
I would gladly heare thy conceipt therein how
they may stande with conscience. S. But the
cases & I shall with good will say as I think
to them.

¶ Addition.

¶ The first question of the Doctor, how the
law of England may be said reasonable &
prohibiteth them & be arraigned vpon
an enditment of felony or murther
to haue counsaile.

¶ The xlviii. Chapter.

¶ I thinketh that the lawe in that point is
very good and indifferent, takinge the lawe
therein as it is, D. why, what is the lawe in
this point? S. The lawe is as thou saiest, that
he shal haue no counsaile, but then the lawe is
farther, that in all thinges that pertaine to the
order of pleadinge, the Judges shall so instruct
him and so order him that he shal runne into no
reopardy by his mispleading, as if he will plead
that he neuer knewe the man that was slayne
or that he neuer had a peny worth of the goods
& is supposed that he should steale, in these ca-
ses & iudges are bound in conscience to enforce
him that he must take the general issue & plead
& he is not guilty, for though they be set to be
indifferent betwene the king & the party as to
the party, & to the principal matter as they be
in

in al other matters, yet they bee set in this case to see y^e the party take no hurt, in forme of pleading in such matters, as he shal shewe to be the truth of the matter, & that is a great fauoure of the law, for in appeale, though the Iustices of fauor will most comonly helpe forth the party, and sometime his counsaile also in the forme of pleading, as they doe also many times in comon ples, yet they might i those cases if they would bid the party, & his counsaile plede at their peril. But they may not doe so with conscience vpon endictmentes as me seemeth: for it were a great vnreasonableness in y^e law, if it should prohibite him that standeth in ieoperdy of his lyfe that he should haue no counsaile, & then to driue him to plede after the straitte rules, formalities of y^e law that he knoweth not. D. But what if hee be knowe for a comon offender, or y^e the iudges know by examination, or by an euident presumption y^e he is guilty, & he asketh sanctuary, or pledeth misnomer, or hath some record to plede, y^e he cannot plede after the fourme: May not the Iudges in such cases bid him pled at his peril: S. I suppose that they may not, for though he be a common offender, or that he be guilty, yet hee ought to haue that y^e lawe geueth him, and that hee shal haue the effect of his ples, and of hys matters entred after the fourme of the law, and also sometime a man by examination, & by witness may appere guilty that is not. And in likewise there may be a vehement suspicion that he is guilty, & yet he is not guilty, & therefore for such suspicions, or vehement presumptions me thinketh

The xlviii. Chapter.

thinketh a mā may not wth cōscience be put frō h^e he ought to haue by y^e laswe, ne yet although the iudges knew it of their own knowledg: but if it were in appele I suppose y^e the Judges might do therein as they should think best to be done in cōscience, for there is no lasw y^e bindeth thē to instruct him, but as thei do commonly the parties of fauour in al other cases, but they may if thei wil byd them pleade at their peril by aduise of their counsaile, & if the appellee bee poore, & haue no counsaile, the court must assigne him counsell if he aske it, as thei must do in al other places, & y^e me thinketh they are bounde to doe in cōscience though y^e appellee were neuer so great an offender, and though the Judges knewe neuer so certainly y^e he were guilty, for the laswe bindeth thē to do it. And so me thiketh y^e there is great diuersity betwene an indictment & an appele. And the reason why the lasw prohibiteth not counsel in appele as it doth in an indictment, I suppose is this. There is no appele brought, but that of common presumption the appellant hath great malice against the appellee. And when y^e appeale is brought by y^e wife of the deth of her husband, or by the sōne of the death of his father, or that an appele of robbery is brought for stealing of goods. And therfore if y^e Judges should in those cases shew theselues to instruct the appellees, the appellants would grutch and thinks them partial, and therfore as wel for the indemnity of the court, as of the appellee in case that he be not guilty, the lasw suffreth y^e appellee to haue counsel but when that a man is indicted at the Kinges
suite

inite, & king intēdeth nothing but iustice with fauor, & y^e is to the rest & quietnes of his faith-
ful subiects, & to pul away milders amōg them
charitably, & therefore he wil be cōtented y^e his
iustices shal help forth y^e offenders according to
the truth, as far as reason & iustice may suffer.
And as the king wil be cōtēted therein: it is to
presume y^e the counsel wil be contented. And so
there is no daunger therby, neither to the court
ne to the party, & as I suppose for this reasoⁿ it
began y^e they shoulde haue no counsaile bypon
indictments, & that hath so long continued that
it is now growen into a custome, & into a max-
ime of y^e law, that they shal none haue. D. But
if the Judges knew of their owne knowledg
that y^e inditee is guilty, & then he pledeth mis-
nomer or a recorde that he was auterfoits ar-
raigned, & acquite of y^e same murther, or felony,
& the iudges of their owne knowledg know y^e
the plee is vnttrue, may they not then bidde him
plede at his peril? S. I think yes, but if they
know of their owne knowledg y^e he were guilty
of the murther or felony, but that the plee was
vnttrue thei knew not but by cōiecture or infoz-
mation, I thinke they might not then bid him
plede at his perill.

The second question of the Doctor whether
warrantie of the yonger brother, that is taken
as heire, because it is not known but that the
eldest brother is deade, be in conscience a
bar vnto the elder brother, as it is
in the lawe.

The xlix. Chapter.

The xlix. Chapter.

A Man seised of lāds in fee hath issue n̄. sōnes, the eldest sonne goeth beyond the Sea, & because a common voice is that he is deade, & yonger brother is takē for heire, the father dyeth & yonger brother entreth as heire, & alpeneth the lande with a warrant, and dieth without any heire of his body, & after & elder brother cometh againe, & claimeth & land as heire to his father, whether shal he bee barred by that warrant in conscience as he is in the lawe?

S. It is a maxime in the lawe, that the eldest brother shal in & case be barred. And that maxime is taken to be of as strong effect in the lawe, as if it were ordeined by statute to be a barre.

And it is as olde a law & such a warrant shall barre the heire: as it is that the inheritance of the father shal only disceind to the eldest sonne.

And ſith the law so is, why should not the conscience follow the law, as wel as it doth in that point, that the eldest sonne shal haue the lande.

D. For there appeareth no reasonable cause whereupon & maxime might haue a lawfull beginning, for what reason is it that the warrant of an auncestor that hath no right to lande, shoulde barre him that hath right. And if it were ordeyned by statute, that one man should haue an other mans land, & no cause is expressed why he shoulde haue it, in that case though he might hold the lande by force of that statute, yet he could not hold it in conscience, wout there were

were a cause why he should haue it, & these causes be not like as me semeth to the forfeiture of goods by an outlawry, for I will agree for this time, that that forfeiture standeth with conscience, because it is ordained for ministration of iustice, but I cannot perceiue any such cause heare: and therefore me thinketh that this case is like to the maxime, that was at the common law of wreke of the sea, that is to say, that if a mannes goods had bene wreched vpon the sea, that y goods should haue bene immediately forfeited to the kinge. And it is holden by al Doctours that that law is against conscience, except certaine cases y were to longe to rehearse nowe. And it was ordeined by y statute at Westminster y first, that if a Dogge, or Catte come alive to the lande, that the owner if he proue y goods within a yere and a day to be his, shal haue the, wherby the said lawe of wreches of the sea, is made more sufferable the it was before, & some thinke in thys case that this warranty is no barre in conscience, though it be a barre in the law. S. I pray thee kepe that case of wreke of the sea in thy remembraunce, and put it hereafter, as one of thy questions, & thereupon shewe me thy farther minde therein, and I shal with good wil shew thee my minde, & as to this case y we be in nowe, me thinketh the maxime wherby the warranty shalbe a barre, is good & reasonable, for it semeth not against reason that a mā shalbe bounde, as to temporall thinges, by the acte of hys auncester to whom hee is heire, for like as by the lawe it is ordayned, that hee shal

M. j.

haue

haue aduantage by the same auncester, and haue
 al his lands by discret if he haue any right, so it
 seemeth that it is not vnreasonable, though the
 law for y^e priuaty of bloud that is betwene the
 suffer him to haue a disaduantage by the same
 auncester, but if the maxime were y^e if any of hys
 auncesters, though hee were not heire to him
 made such a warrant, that it should be a barre,
 I thinke that maxime were against conscience,
 for in that case there were no ground, nor conside=
 ration to proue howe the saide maxime shoulde
 haue a lawfull beginning, wherefore it were to
 be taken as a maxime against the law of reason,
 but me thinketh it is otherwise in this case, for
 the reason that I haue made before. D. If the
 father binde him and his heires to the payment
 of a debt and dye, in that case the sonne shal not
 bee bounde to pay the debt, vnles he haue assets
 by descent from his father. And so I would a=
 gree, that if this man haue assets by descent fro
 the auncester that made the warrant: that he
 should haue bene barred, but els me thinketh it
 should stand hardly with conscience, y^e it shoulde
 be a barre. S. In that case of the obligation,
 the law is as thou saiest, and y^e cause is for that
 the maxime of the lawe in that case is none o=
 ther, but that he shalbe charged if he haue assets
 by descent, but if the maxime had bene generall
 that the heire should bee bounden in that case
 without any assets, or if it were ordeined by
 statute that it should be so, I thinke that both
 the maxime and the statute shoulde well stande
 with conscience. And lyke law is where a man
 is

is bouched as heire, hee may enter as hee hath nothing by discent, but where hee claimeth the land in his owne right, there the warrantie of his auncester shalbe a bar to him, though he haue no assents from y^e same auncester, & though it bee said in Ezechiel the xviij. Chapter. That the sone shal not beare the wickednes of the father that is vnderstand spiritually. But as to temporal goods the opinio of Doctours is, that the sone sometime may beare the offence of his father. D. now y^e I haue heard thy minde in this case, I will take aduise ment therein till a better leasure. And wil now proceede to an other question. S. I pray thee doc as thou saiest, & I shal with good wil make aunswere thereto as wel as I can.

¶ The third question of the Doctour, if a man procure a collateral warraty, to exting a right that he knoweth an other man hath to land whether it be a barre in conscience as it is in the law or not.

¶ The I. Chapter.

A Man is disseised of certaine lande, the disseisor selleth y^e land &c. y^e aliene knowing of y^e disseiso, obtaineth a release wth a warrantie of an auncester collateral to y^e disseisor y^e knoweth also the right of the disseisor. That auncester collateral dieth, after whose death the warraty descendeth vpon the disseisor, whether may the aliene in that case holde the lande in conscience

The 1. Chapter.

ence as he may by the law. **S.** Sith the warranty is discended vpon him, whereby he is barred in the law, me thinketh that he shal also be barred in conscience, & y^e this case is like to the case in the next chapter before, wherein I haue saide that as me thinketh it is a barre in conscience. **D.** Though it might be taken for a barre in conscience in that case, yet mee thinketh in this case it cannot, for in that case the yonger brother entered as heire, knowing none other but that he was heire of right, & after when he sold y^e lande the buyer knew not but that he that sold it had good right to sel it, and so he was ignorant of the title of the eldest brother, and that ignorance came by y^e defaulte and absence of himselfe, that was the eldest brother. But in this case as wel the buier, as he that made y^e collateral warranty, knew the right of the disseisee, & did that they coulde to exting the ryght, and so they did as they would not should haue bene don to the, & so it semeth that he that hath the land may not with conscience keepe it.

S. Though it be as thou saiest y^e al they offended in obtaining of the said collateral warranty, yet such offence is not to be considered in the law, but it be in very special cases, for if such allegations should be accepted in the law, releases, and other writings should bee of small effect, & vpon euery light surmise, al writings might come in trial whether they were made with conscience or not. Therefore to auoide that inconvenience, the lawe wil dyuine the party to answer onely whether it bee his dede or not, and
not

not whether the dede were made wth conscience
 or against conscience, & though the party maye
 be at a mischief therby, yet the law wil rather
 suffer the mischief then the said inconuenience.
 And like law is if a womā couert for dread of
 her husbände by compulsion of him leuy a fine,
 yet the woman after her husbādes death shall
 not be admitted to shew the matter in auoiding
 of y^e fine for thincōueniēce y^e might follow ther-
 upon. And after the opinion of many mē, there
 is no remedy in these cases in the Chancery
 for they say y^e where y^e cōmō lawe in cases con-
 cerning inheritāce putteth the party frō any a-
 uerment for escheewing of an inconueniēce that
 might follow of it amog the people, that if the
 same inconueniēce should follow in the Chan-
 cery if the same matter should be pleaded there,
 that no sub pena should lye in such cases, & so it
 is in y^e cases before rehearsed, for as much vex-
 ation, delay, costes, & expenses might growe to
 the party if he should be put to answer to such
 auerments in y^e chancery, as if he were put to
 answer to them at the common law, & there-
 fore they thinke that no Sub pena lieth in the
 saide cases ne in other like vnto them. Neuer-
 theles I do not take it y^e their opinion is that
 he that bought the land in this case may wth
 good conscience holde the land, because hee shall
 not be cōpelled by no law to restore it, but that
 hee is in conscience and by the lawe of reason
 bounde to restore it, or otherwyle to recom-
 pence the partie, so as he shall bee contented, &
 I suppose verelye it is so if hee will keepe hys
 soule

The 1. Chapter.

Soule out of peril and daunger. And after some men to these cases may be resembled the case of a fine with none claime that is remēbzed before in the xiiij. Chapter of this booke, where a man knowing another to haue right to certaine lād causeth a fine to be leuied therof with pclamation and the other suffereth fine yeres to passe without claime, in that case he hath no remedy neither by common lawe, nor by sub pena, and that yet he y leuied the fine, is bound to restore y land in conscience. And me thinketh I could right wel agree that it should be so in this case, & that specially, because y pty himself knoweth perfectly that the said collaterall warrāty was obtained by couin and against conscience.

The fourth question of the Doctour
is of wrecke of the Sea.

The ij. Chapter.

I pray thee let me now heare thy minde howe the law of Englande concerning goodes that be wrecked vpon the sea may stande with conscience, for I am in great doubt of it. S. I pray thee let me first heare thine opinion what thou thinkest therein. D. The statute of Westminster the first that speaketh of wreckes is, y if any man, dogge oz catte, come aliuē into y lād out of the shipp oz barge, that it shall not be indged for wrecke, so that if the partie to whome the goodes belonge come within a yere & a day and proue them to be his, that he shall haue the oz els that they shal remaine to the kinge. And me thinketh that the saide statute standeth not
with

with conscience, for there is no lawefull cause why the party ought to forsaite his goodes ney the king or lordes ought to haue the, for there is no cause of forfeiture in the party, but rather a cause of sorow & heavines. And so by lawe is meth to adde sorow vpon sorow. And therefore doctours holde commonly that he that hath such goodes is bound to restitution, and that no custome may helpe, for they say it is against the comāndement of God, Leuit. xix. where it is comānded that a man should loue his neighbour as himselfe, and that they say he doeth not, that taketh away his neyghbours goodes, but they agree that if any man haue cost and labour for the sauing of suche goodes wrecked, specially for such goodes as would perish if they lay still in the water, as Sugar, Paper, Salt, Beele, & such other, that he ought to be allowed for hys costes and labour, but he must restore the goods except hee coulde not saue them withoute putting his life in ieopardy for them, and then if he put his life in such ieopardy and the owner by common presumption had had no way to haue saued them, the it is most comonly holden that he may keepe the goodes in conscience, but of other goodes that would not so lightely perishe, but that the owner might of commō presumption saue them himself, or that might bee saued without any peril of life, the takers of them be bounde to restitution to the owner, whether he come within the yere or after the yere.

And me thinketh this case is somewhat like to a case that I shall put, if there were a lawe

Q. iij.

and

7

The ij. Chapter.

and a custome in this realme or if it were orde-
ned by statute, that if any alien came through
realme in pilgrimage & died, that all his goodes
should be forfeit, that law should be against con-
science, for there is no cause reasonable why the
sayd goodes shoulde be forfeite. And no more
mee thinketh there is of wrecke. S. There
be diuers cases where a man shal lese his goodes
and no default in him, as where beastes straye
away fro a man and they be taken up and pro-
claimed and the owner hath not heard of them
within the yere and the day, though hee made
sufficient diligence to haue heard of them, yet his
goodes be forfeit and no default in him, and so it
is where a man killeth another with the sworde
of J. at Stile, his sworde shal be forfeit as a deo-
dand, & yet no default is in the owner, & so mee
thinketh it may be in this case, and that with the
common law before the said statut was that his
goodes wrecked vpon the sea shal be forfeit to
the king that they be also forfeit now after the
statute, except they be saved by following his sta-
tute, for the law must needs reduce his propertie
of all goodes to some man, & when the goodes
be wrecked it seemeth his propertie is in no man,
but admitte that the propertie remaine still in
the owner, then if the owner percase would ne-
uer claime, then it should not be known who
ought to take them: and so myght they be dys-
troyed and no profite come of them, wherefore
mee thinketh it reasonable that the law shal ap-
point who ought to haue them, & that hath the
law appointed to his king as soueraigne & head
ouer

ouer the people. **D.** In the cases that thou hast put before of the strape and deodand, there be considerations why they be forfeit, but it is not so here, and me thinketh that in this case it were not unreasonable that y^e law should suffer any mā that would take thē to take & kepe them to the vse of the owner, sauing his reasonable expēses, and this me thinketh were more reasonable law then to pul the property out of the owner without cause. But if a man in the sea cast his goods out of the shippe as forsaken, there doctours holde that euery man may take them lawfully that will, but otherwise it is as they say if he throw the out for feare that they should ouercharge the ship.

S. There is no such lawe in this Realme of goodes forsaken, for though a man sweep the possession of his goodes and saith hee forsaketh them, yet by the law of the realme the ppertie remayneth stil in him, and hee may leyle them after when hee wil, and if any man in the meane tyme put the goodes in safe garde to the vse of the owner: I thinke hee doth lawfully and that he shalbe allowed for his reasonable expēses in that behalfe, as hee shall bee of goodes founde, but hee shall haue no property in them no more then in goodes founde. And I woude agree that if a man prescribe, that if he find any goodes within this manor that he shoulde haue them as his owne, that that prescription were boide, for there is no consideration how y^e prescription myght haue a lawfull beginninge, but in this case me thinketh there is. **D.** what is it. **S.**

The liij. Chapter.

S. It is this, The kinge by the olde custome of the realme, as lord of þ narrowe sea, is bound as it is said to scoure the sea of the pirats & petit robbers of the sea. And so it is read of þ noble kinge saint Edgare: that he would twise in the yere scoure the sea of such pirates, but I meane not therby that the kinge is bound to conduct his marchants vpon the sea against al outwarde enemies, but that he is bounde onely to put away, such pirates and petit robbers.

And because þ cannot be done without great charge, it is not vnreasonable if he haue suche goodes as be wrecked vpon the sea toward the charge. **D.** Vpon that reason I wil take a respite til another time.

The v. question of the Doctor whether it stand with conscience to prohibite a Jury of meate and drinke til they be agreed.

The liij. Chapter.

If one of the xij. men of an enquest knowe the very trouthe of his owne knowledge, and instructeth his felowes therof, & they will in no wise geue credence to him, & thereupon because meate & drinke is prohibited them, he is driven to þ point that eyther he must assent to them, and geue their verdict against his owne knowledge, and against his owne conscience, or dye for lacke of meate, how may the law the stande with conscience that will drive an innocent to þ extremitie, to be either forsworne or to be famished and die for lacke of meat. **S.** I take not the lasse of þ realme to be þ þ Jury after they

bee sworn may not eate nor drinke till they be agreed of the verdict, but trowth it is there is a Maxime, and an olde custome in the lawe, that they shall not eate nor drinke after they bee sworn till they haue geuen their verdict without the assent and licence of the Justice, & y^e is ordeined by the lawe for eschewing of dyuers inconueniencies that might follow therapon, & that specially if they should eat or drinke at the costes of the parties, & therefore if they do the contrary, it may be layed in a rest of the iudgement, but with the assent of the Justices, they may both eate and drinke, as if any of the Jurours fall sicke before they bee agreed of their verdict so sore that he may not comon of y^e verdict, thē by the assent of y^e Justices he may haue meate and drinke and also such other things as be necessarye for him and his felloswes also at their owne costes, or at the indifferent costes of the parties if they so agree, or by the assent of the iustices may both eat and drinke, and therefore if the cause happen that thou now speakest of, & that the iury can in no wise agree in their verdict, & that appeareth to the Justices by examinatyon: the iustices may in that case suffer them haue bothe meate and drinke for a tyme to see whether they will agree, and if they will in no wise agree; I thinke y^e the Justices may set such order in y^e matt as shall seme to thē by their discretiō to stād wth reasoⁿ & cōscience by awarding of a new enquest & by settig fine vpoⁿ thē that they shal find in default, or otherwise: as they shal thinke best by their discretion like
as

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as they may do if one of the iury die before ver-
dict, or if any other like casualties fall in that be-
half. But what the iustices ought to do in this
case that thou hast put by their discretion: I
will not treat of at this time.

The vij. question of the doctour whether the
colours that be geuen at the comon law in
assises, actions of trespass, and diuers o-
ther actions stand with conscience
because they be most comely
feined and be not true.

The liij. chapter.

I pray thee let me heare thy minde to what
intent such coloures be geuen, & whether they be
commonly vntue: howe they may stande with
conscience? S. The cause why suche coloures
be geuen is this, there is a maxime & a grounde
of the lawe of Englande, that if the defendaunt
or tenant in any action pleade a ple that amou-
teth to þ general issue that he shalbe compelled to
take the general issue, and if he wil not, he shall
be condemned for lacke of answer, & the ge-
neral issue in assise is, that he that is named the
disseisour hath done no wrong nor no disseison.
And in a writ of entre in the nature of assise þ
general issue is that he disseised him not, and
in an action of trespass that he is not guiltye, &
to euery action hath his generall issue assygned
by the law, and the tenant must of necessitie ei-
ther take þ general issue, or plede some ple in a-
bateint of the writ to the iurisdiction, to þ par-
ty or els some barre or some matter by way of
conclusion. And therefore if J. at Hile intesse
Henry

Henry Hart of land, and a stranger bringeth an assise against the said Henry Hart, for that land whose title he knoweth not. In this case, if he should be compelled to plede to the point of the assise, that is to say, that he hath done no wrong ne no disseison, the matter shoulde be put in the mouthes of xij. lay men, which be not learned in the law, and therefore better it is that the law be so ordered, that it be put in the determinatiō of the Judges, then of lay menne. And if the sayde Henry Hart in the case before rehearsed, would plede in barre of the assise that John at Stile was seised & enfeoffed him, by force where of he entred and asked iudgement, if that assise should lie against him, that ples were not good, for it amounteth but to þ general issue, & therefore he shalbe compelled to take þ general issue, or els the assise shalbe awarded against him for lacke of answer. And therefore to the intent the matter may be shewed and pleded before the Judges, rather thē before þ Jury, the tenants ble to geue the plaintife a colour, that is to say, a colour of action whereby it shal appere that it were hurtful to the tenant to put that matter that he pledeth to the iudgement of xij. men, and the most common coloure that is vled in such case is this, whē he hath pleded that such a man enfeoffed him, as before appereth, it is vled that hee shall plede farther, and say that the pleintife claiming by a colour of a deede of feffement made by the said feoffour, before the feffement made to him, where no right passed by þ deede, entred, vpon whom hee entred, and asked iudgement if
the

The liij. Chapter.

the assise lie against him. In this case because it appereth to bee a doubt to vnlearned men whether the land passe by the deede without iquery or not, therefore the law suffereth the tenant to haue that speciall matter to bring the matter to the determination of the Judges. And in such case the Judges may not put the tenant fro the place, for they knew not as Judges, but that it is true, and so if any default be, it is in y^e tenant and not in the court. And though the truth bee that there were no such deede of feffement made to the plaintife as the tennant pledeth, yet men thinketh there is no default in the tennant, for he doth it to a good intent as before appeareth.

D. If the tenant knowe y^e the feoffour made no such deede of feffement to the plainetife, then there is a default in the tennant to plede it, for he wittingly sayeth agaynst the trowth, and it is holden by all doctours that euerye lye is an offence more or lesse, for if it be of malice, & to the hurt of his neighbour, then it is called (*Mendacium perniciosum*) and that is deadlye sinne. And if it bee in sporte, and to the hurt of no man, nor of custome bled, ne of pleasure that he hath in lying, then it is veniall sinne, and is called in latine, *mendacium iocosum*. And if it be to the profite of his neyghbor and to the hurt of no man, then it is also veniall sinne, and is called in latine, *mendacium officiosum*. And though it bee the least of those thre, yet it is a venial sinne and woulde bee eschewed. **S.** Though the myddowes of Egypt lyed when they had reserued the male children of y^e Ebrewes, sayinge to the king

king Pharao, that the Hebrewes had women, that were cunninge in the same crafte, which or they came had reserved the chyldren alive, where in dede they theselues of pity & of dreade of god reserved them, yet saincte Hierome expoundeth the text following, which saith þ our lord therefore gaue them houses, that is to bee vnderstande, that he gaue them spiritual housez and that they had therefore eternal rewarde, & if they sinned by that lie, although it were but venial, yet I cannot see how they shoulde haue therefore eternal rewarde. And also if a man intending to slea an other, aske me wher that man is, is it not better for me to lye and say I cannot tel where he is, though I knowe it, then to shew where he is, whereuppon murther shoulde followe? D. The dede that the midwyues of Egypte did in sauinge the chyldren, was meritorious, and deserved rewarde everlastinge (if they beleued in god) & did good dedes beside, as it is to suppose thei did, when they for the loue of G D D, refused the death of the innocentes, and then though they made a lye after, whych was but venial sinne, that coulde not take from them their rewarde, for a venial sinne doth not utterly extinct charity, but letteth the feruour thereof, and therefore it may well stande with the wordz of saint Hierome, that they had for their good dede eternal houses, and yet the lye that they made to be a venial sinne, but nevertheless if such a lie þ is of it self but venial, be affirmed w an oth, it is alway mortal if he knowe it be false that he sweareth. And as to thother que-

The xliij. Chapter.

question it is not like to this question, that we have in hand as me seemeth, for sometime a man for eschewing of the greater euill may doe a lesse euill, and then the lesse is no offence in him, & so it is in the case that thou hast put, wherein because it is lesse offence to say hee swotteth not where he is, though he know where he is, then it is to shew where he is. Whereupon murther shoulde follow, it is therefore no sinne to say he swotteth not where he is, for every man is bound to loue hys neighbour, and if he shewe in this case where he is, knowing his death should follow thereupon, it semeth that he loued him not, ne that hee did not to him as he would bee done to, but in the case that we be in here, there is no such sinne eschewed, for though the party pleadeth the general issue, the Jury might finde the truth in euery thinge, and therefore in that he saith that the plaintife claiming in by a colour of a deede of feoffement, where nought passed entered &c. knowing that there was no such feoffement, it was a lie in him and a beneal sinne, as me thinketh. And euery man is bounde to suffer a deadly sinne in his neighbour, rather then a beneal sinne in himselfe.

S. Though the Jury vppon a general issue, may finde the truth as thou sayest, yet it is much more dangerous to the Jury to inquire of many points then to inquire only of one point. And forasmuch as our lord hath geuen a commandment to euery man vppon his neighbour, therefore euery man is bounde to force as much as in him is by him no occasiō of offence cōe to his neigh-

neighbour. And for þe same cause, the laswe hath ordeined diuers maximes & principles, where= by issues in the kings court may be ioined vpon one point in certaine as nigh as may bee, & not generally, least offēce might folow therupon a= gainst god, & a hurt also vnto þe Jury, wherfore it semeth that he loueth not his neyghbour as himselfe, ne that hee doth not as he woulde bee don to, þe offereth such daunger to his neighbor, where he may wel & cōueniently keepe it from him, if he wil folloiw the order of the laswe, & it semeth that he putteth himselfe wilfully in ieo= pardy that doth it, & it is wzitten Eccle. iij. Qui amat periculum, in illo peribit, that is to say, hee that loueth peril, shal perish in it, & hee that putteth his neighbour in peril to offed, putteth himselfe in the same, and so should he do me semeth that would wilfully take the general issue, where he might cōueniently haue the special matter, and furthermore it is none offēce in princes and ru= lers to suffer contracts, & buying and selling in markets, & faires, though both piury & desceipt wil folloiw therupon, because such contracts be necessary for the cōmō welth, so it semeth like= wise, that there is no default in the party þe ple= deth such a special mat̃ to auoide fro his neigh= bour the daunger of periury, ne yet in the court though they induce him to it, as they do sōtime for the intent befoze rehearsed, and in likewise some wyl say that if rulers of cities and com= munalities, somtime for þe punishmēt of felons, murtherers, & such other offenders wil (to the intēt they would haue them to cōfesse þe truth)

The liiiij. Chapter.

say to them that be suspected, & thei be informed of such certaine defaultes, or misdeameanors in the offendors, & that they do to þ intent to haue them to confesse the truthe, that though they were not so infourmed, that yet it is no offence to say they were so informed, because they do it for the cōmon welth, for if offendors were suffered to goe unpunished, the cōmon welth would sone decay and vtterly perish.

D. I wil take aduise ment vppon thy reason in this mattē til another seoson, & I wil now aske thee another question somwhat like vnto this, I pray thee let me heare thy minde therein. S. Let mee heare thy question & I shal with good will say as I thinke therein.

¶ Additions.

¶ The vij. question of the Doctor concerneth the pleading in assise, whereby the tenants vse somtime to plede in such maner that they shall confesse no oulter.

The liiiij. Chapter.

It is cōmonly vsed as I haue heard say that when þ tenant in assise pleadeth that a stranger was seised and enfeoffed him, & geueth the plaintiff a colour in such maner as before appeareth in the xlvij. Chapter, that þ tenant many times when he hath pleded thus, and the plaintiff claiming by a colour of a deede of feoffement made

made by the said straüger, where nought passed by the deede entred, & that then they ble to say further, vpon whom A. B. entred, vpon whom the tenant entred, where in deede the said A. B. neuer entred, ne hapely ther was neuer no such man: How cā this pleding be excused of an vntruth, & what reasonable cause can be why such a pleading should be suffered against the truth.

S. The cause why that maner of pleding is suffred is this. If þ tenant by his pleding confessed an immediate entry vpon the pleintife, or an immediate putting out of þ pleintife, which in frēch is called an ouster, thē if the title were after found for þ plaintife: the tenāt by his confession were attainted of the disseyson. And because it may be, þ though the plaintife haue good title to þ land, that yet the tenāt is no disseisor. Therefore þ tenāts ble many times to plede in such maner as thou hast said before, to saue themselves frō cōfessig of an ouster, & so if there be any default, it is not in the court, ne in the lawe, for thei know not the truth therein til it be tried, & me thinketh also that there is in this case right little default or none in þ tenāt nor in his counsel, specially if the counsaile know that þ tenāt is no disseisor. But as to that point I pray thee that thou as thou hast taken a respite to be aduised, or that thou shew thy full minde in the question of a colour geuen in assise, wherof mention is made in the saide xlvij. Chapter: that I likewise may haue a like respite in this case till an other time, to be aduised, & then I shal with good will shew thee my full minde therein.

The liiiij. Chapter.

D. I am content it bee as thou saist, but I pray thee that I may yet adde an other questio to the ij. questio's before rehersed of the colours in assise & feele thy minde therein, because y^e s^econdeth much to the same effect that the other doe (that is to say) to proue that there be diuers thinges suffred in the law to be pleaded that bee against the truth, & I pray thee let me hereafter knowe thy minde in al thre questions, and thou shalt then with a good wil knowe mine. **S.** I pray thee shew me y^e case y^e thou speakest of. **D.** If a man steale an hore secretly in the night. It is bled y^e thereupō he shalbe indicted at the kinges suite, and it is bled that in that indictment it shalbee supposed that hee such a day, and place with force, and armes (that is to say) wyth staues, swords, and knives, &c. feloniously stole the hore against the kinges peace, & that forme must be kept in euery indictment, though y^e felon had neither sword nor other weapon with him but that he came secretly wout weapon. Howe can it therefore be excused, but that therein is an vntruth. **S.** It is not alleadged in the indictment by matter in deede that hee had such weapon, for the forme of an indictment is thys, *Inquiratur pro domino Rege, si A. tali die & Anno apud talem locum vi & armis videlicet gladiis &c. talem equam talis hominis felonice cepit &c.*

And then the twelue men bee onely charged with the effect of the bill, That is to say, whether he be guilty of y^e felony or not, & not whether hee be guilty vnder such maner and forme as the bil specifieth or not, & so when they say
(billa ve-

(billa vera) they say true as they take the effect of the bil to be. And therfore if there were false latin in the bil of indictment, & the Jury saith (billa vera) yet their verdict is true, for their verdict stretcheth not to the trowth or falshed of y latin, but to y felony, ne to the forme of the words, but to the effect of the matter, & that is to inquire whether there were any such felony done by the parson or not, & though the bil vary fro the day, fro the yere, & also from the place where y felony was done in, so it vary not fro the shire that the felony was done in.

And the iury saith (billa vera) they haue geue a true verdict, for they are bound by their othe to geue their verdict according to y effect of the bil & not according to the forme of the bill. And so is he that maketh a vowe, bound likewise to that by the law is the effect of his auow, & not oly to y words of his auow. And if a ma auow neuer to eate white meat, yet in time of extreme necessity he may eat white meat, rather the die & not breake his auow, though hee affirmed it with an othe, for by the effecte of his auow, extreme necessitye was excepted, though it were not expressely excepted in y words of y auow, & so likewise though the wordes of the bil bee to enquire whether such a man such a day & yere & in such a place did such a felony, yet the effect of the bil is to enquire whether he did the felony within the shire, or no, & therfore the Justices befoze whom such indictments be taken, most comonly enforme the iury that they are bound to regarde the effect of the bil & not the fourme.

The liiiij. Chapter.

And therfore there is no vntrouth in this case neyther in him that made the bil, ne yet in the Jury as me semeth, D. But if the party that ought the horse bring an action of trespass, and declareth y the defendaunt tooke the horse with force and armes, were he tooke him wout force and armes, howe may the plaintife there be excused of an vntrouth.

S. And if the playntife surmit an vntrouth, what is y to the court oz to y law, for thei must beleue the plaintife, til y that he saith be denied by the defendant. And yet as this case is, there is no vntrouth in y pleintife to say he tooke the horse with force and armes, though he came neuer so secretly and without weapon, for every trespass is in the law done w force & armes, so that if hee be attainted and found guilty of the trespass, he is attainted of the force and armes: And sith the law adiudged every trespass to be done w force, therefore the plaintife saith truly that he tooke him w force as the lawe meaneth to be force. For though he tooke y horse as a felon, yet vpo the felonious taking y owner may take an action of trespass if hee will, for every felony is a trespass and more. And so I haue shewed thee some part of my minde to prooue y in those cases there is no vntrouth, neither in y parties, neither in the iury, nor in the law. Nevertheless, at a better leasure I wil shew thee my minde more fully therein with good wil as thou hast promised me to do in the cases of the colours of the assise, and of the ouster, that bee before rehearsed.

The

¶ The viij. question of the Dodour whether the statute of xlv. of Edward the third of *Silua cedua*, stand wth conscience.

¶ The lv. Chapter.

In the xlv. yere of h^e raigne of king Edward the thirde, it was enacted, that a prohibition should lye where a mā is impleaded in h^e court Cristien, for dismes of woode of the age of xx. yere or aboue, by the name of *Silua cedua*, how may that statut stand with conscience that is so directly against the libertie of the church, & that is made of such things as the Parliament had no authoritie to make any law of. **S.** It appeareth in the said statut that it is enacted that a prohibition should lye in that case, as it had bled to do before that time, & if the prohibytion lay by a prescription before the statute, why is not the statut good as a confirmation of that prescription. **D.** If there were such a prescription before the statute that prescriptyon was boide, for it prohibiteth the paymēt of tithes of trees of the age of xx. yere or aboue, and paying of tithes is grounded as well vpon the lawe of God, as vpon the law of reason, & against those lawes lyeth no prescription as it is holdē most commonly by al men.

S. That there was such a prescription before h^e said statut, & h^e if a man before the said statute had bē sued iⁿ h^e spiritual court for tithes of wood of h^e age of xx. yere or aboue h^e prohibition lay, as
 ¶.iiij. appea=

The lv. Chapter.

appeareth in þe said statut, & it cānot be thought that a statute that is made by authority of the whole realme, as wel of þe king & of the lordes spiritual & temporal as of all the cōmons, will recite a thing against the trueth: & furthermore I cānot see how it can be groundēd by the lawe of God, or by the lawe of reason that the x. part should be paid for tithe & none other porciō but that, but I thinke that it be groundēd vpon the lawe of reason that a man should geue a reasonable porcion of his goodes tēporal to the þe minister to him things spiritual, for euery man is bound to honour God of his pper substance, and the geuing of such porciō hath not bē only bled amōg faithful people, but also amōg vnfaithful as it appereth Gen. xlvij. where corne was geue to the priests in Egypt of cōmō barns. And S. Paul in his Epistles affirmeth þe same in many places, as in his first Epistle to the Corinth. the ix. chapter where he saith, he þe workeþ in þe church. shal eate of that that belōgeth to the church. And in his Epistle to the Galathias the vi. chapter he saith, let him that is instructed in spiritual things, depart of his goods to him that instructed him. And S. Luke in the x. chapter saith, that the workemā is worthy to haue his hier. All which sayinges may right conueniently be taken and applyed to his purpose, the spirituall men which mynister to the people spiritual things, ought for their ministracion to haue a competent liuing of them that they minister vnto. But that the x. parte should be assigned for such a porcion and neyther

ther more nor lesse. I cannot perceine that that should be grounded by þ law of reason, nor immediatly by the law of God: for before the law wrytten there was no certaine portion assigned for the spiritual ministers, neither þ x. part, nor the xij. part, vnto the time of Iacob, for it appeareth. Gen. xxv. that Iacob answered to pay dimes which was amōge the Jewes for the x. part, if our lord prospered him in his journey, & if the x. part had bē his duety before þ answ, it had bē in vaine to haue answered it, & so it had if it had ben grounded by the lawe of reason & as to that is spoken in the Euangelistes, & in the new law of tithes, it belōgeth rather to the ge-
ning of tithes in the time of the old law, thē of the new law, as appeareth Mathewe xxij. and Luke xj. where our lord speaketh to the Pharises, saying, wo be to you Pharises that tithe mintes, rue, & herbes, & forget the iudgemēt and the charitie of God, these it behoueth you to do & the other not to omit, þ is to say, it behoueth you to do iustice, & charitie of God, and not to omit payig of tiths though it be of smal things as of wintes, rue, herbes, and such other. And also that þ Pharisey saith. Luke xv. I paye my tithes of al that I haue, is to be referred to the old law not to the time of the newe lawe.
Therefore as I take it that þ payig of tithes or of a certaine portion to spiritual men for their spiritual ministracion to the people hath bene grounded in diuers maners. first before þ law wrytten a certaine porciō sufficient for the spiritual ministers was due to thē by the lawe of
na=

The lv. Chapter.

nature, which after them that be learned in the law of the realme is called the law of reason, & that portion is due by al lawes, and in the law written, the Jewes were bound to geue the x. part to their priests as well by the sayde auow of Jacob, as by the law of God in y^e old testament called the Iudicials. And in y^e new lawe the paying of the x. parte, is by a lawe that is made by the church. And the reason wherefore y^e x. part was ordeined by y^e church to be paid for the tithe was this. There is no cause why the people of the new law ought to pay lesse to the ministers of the new law, then the people of the olde testament gaue to the ministers of the old testamēt. For y^e people of the new law be bound to greater things then y^e people of the old lawe were, as it appeareth Math. v. where it is said vnles your goodworke abound aboue y^e workes of the Scribes & the Pharises, ye may not enter into the kingdome of heauē. And y^e sacrifice of the olde law was not so honorable as the sacrifice of the newe law, is for the sacrifice of the old law was onely the figure, and the sacrifice of the new law is, the thing y^e is figured, that was y^e shadow, this is y^e trouth. And therefore the church vpon that reasonable cōsideratiō ordeined that the x. part should be paid for the sustentance of the ministers in the new law, as it was for the sustentance of the ministers in the old law, & so that law with a cause may be encreased or minished to more portiō or to lesse as shalbe necessary for them. D. It appeareth Genesis xiiij. that Abraham gaue to Melchisedech

dech dismes, and that is takē to be the x. part & y was long before the law written, & therefore it is to suppose y he did that by y law of God. S. It appeareth not by any scripture that hee did y by the cōmaundement of God, ne by any reuelation. And therfore it is rather to suppose that he did part of duetye, and part of his owne free wil, for in that he gaue y dismes as a reasonable portion for the sustenāce of Melchisedech and his ministers, he did it by the cōmaundement of the law of reaso, as before appereth, but that he gaue y x. part, that was of his free wil, and because he thought it sufficient & reasonable: but if he had thought the xij. part or y xij. part had suffised, he might haue geuen it & that w good conscience. And so I suppose that in the new law, the geuing of the x. part is by a law of the church, and not by the lawe of God, vnlesse it be taken that the law of the church is the law of god, as it is somtime taken to be, but not appropriatly nor immediatly, for that is taken appropriatly to be y law of god, that is cōteyned in scripture, y is to say, in the old testament & in the newe. D. It is somewhat daūgerous to say that tithes be grouēded onely bpoy the law of the churche, for some men as it is said, say that mans law bindeth not in cōscience, & so they might happen to make a boldnes thereby to deny their tythes. S. I trust there be none of that opinion, and if there bee it is great pitie. And neuerthelesse they maye bee cōpelled in y case by the law of y church to pay their tithes as wel as they should be if paying of

The Iy. Chapter.

of tithes were grounded meerely vpon the lawe of God. D. I thinke wel it be as thou saiest & therfore I hold me cōtēted therin. But I pray thee shewe me thy minde in this question, if a whole countrey prescribe to paye no tithes for corn or hey, nor such other, whether thou think that that prescription is good.

S. That question dependeth much vppon that that is said before, for if paying of the x. part be by the lawe of reason or by the lawe of God, the prescription is boide, but if it be by the lawe of man, the it is a good prescription so that the ministers haue a sufficient portion beside. D.

John Gerſo which was a doctour of diuinitie in a treatise y^e he named Regule morales: saiet that dismes be paid to priests by y^e lawe of God

S. The wordes y^e he speaketh there, of y^e matter be these (*Solutio decimarum sacerdotibus, est de iure diuino quatenus indersultent; sed quo tam hanc vel illam assignare: aut in alios redditus commutare positiui iuris existit*) That is thus much to say, the paying of dismes to priests, is of the lawe of God, that they may thereby be susteyned, but to assigne this portion or that, or to chaunge it to other rents, that is by the lawe positive, and if it shoulde be taken that by that worde, decimarum, which in Englishe is called dismes or tithes y^e he ment the x. part, & that that x. part shoulde be paid for tithe by the lawe of God, then is the sentence that followeth after against that saying, for as it appeareth aboue, the text saith afterward thus, but to assigne this porciō or that or to chaunge it into other rentes belongeth to the

the law positive, that is to the lawe of man, & if the x. part were assigned by God, then may not a lesse part be assigned by the lawe of man, for it should be contrary to the lawe of god, & so it should be void. And me thinketh that it is not likely for so famous a clarke would speake any sentence contrary to the lawe of god, or contrary to that hee had spoken before, and to prove he ment not by the tme decime, the dismes should alway be taken for the x. part, it appereth in the iij. part of his workes in the 32. title littere, where hee saith thus (*Non vocatur porcio curatis debita, propterea decime: eo quod semper sit decima pars, immo est interdum vicecima aut tricesima.*) That in to say, the porcion due to curats, is not therefore called dismes, for that it is alway the x. part, for sometime it is the xx. or the xxx. part, and so it appeareth by this word *decimarum*, he ment in the text before rehearsed a certain portion, & not precisely the x. part, and that the portion should be paid to priestes by the lawe of God to sustaine them with, taking as it seemeth the lawe of reason in that saying, for the lawe of God as it may one way be well and conveniently taken: because the lawe of reason is geuen to every reasonable creature by God. And then it followeth pursuantly that it belongeth to the lawe of man to assigne this portion or that, as necessity shal require for their sustenance, and then his saying agreeth wel to that that is saide before, that is to say, that a certaine portion is due for priestes, for their spiritual ministracion by the lawe of reason. And then it would followe thereupon that
if

The lv. Chapter.

if it were ordeined for a law that al payinge of tithes should from henceforth cease, & that every curat should have assigned to him such certaine portion of lande, rent, or annnity, as should be sufficient for him, & for such ministers as should be necessary to be vnder him, accordinge to the number of the people there, or that every parishener or housholder shoulde geue a certaine of mony to that vse: I suppose the law were good & y^e was the meaning of John Gerson as it seemeth in his wordes before rehearsed: where he saith, but to chaunge tithes into other rents is by the law positue (y^e is to say) by the lawe of man. And some thinke that if a whole countrey prescribe to be quite of both tithes of cozne, or grasse, so y^e the spiritual ministers haue a sufficient portio beside to liue vpon, y^e is a good p^rscription & y^e they should not offed, that in such countries paid no tithes: for it were hard to say, that al y^e mē of Italy, or of y^e East parties be dampned because they pay no tithes, but a certain portion after y^e custom: therfore certein it is to pay such a certaine portion, as wel they as al other be bound, if the church aske it, any custome notwithstandinge. But if y^e Church aske it not, it seemeth that by y^e not asking, the church remytth it, & an example thereof we may take of the apostel Paul, that though he might haue taken his necessary liuing of the that hee preached to, yet hee toke it not, and neuertheless they y^e gaue it him not, did not offed, because he did not aske it, but if one man in a towne would prescribe to be discharged of tithes, of cozne & grasse, me thin-
keth

keth þ þſcription is not, good vnles he cā pꝛoue
 þ he recōpēſeth it in an other thiḡ, for it ſemeth
 not reaſonable þ he ſhould pay leſſe for his tiḡs
 then his neighbours doe, ſeeing þ the ſpiritual
 miniſters are boūḡ to take aſmuch diligence for
 hi, as thei be for any other of þ pariſh, wherfore
 it might ſtand in reaſon þ he ſhould be cōpelled
 to pay his tiḡes as his neighbors doe, vnles he
 can pꝛoue þ he paieth in recōpence thereof more
 the the x. part in an other thing. Neuertheles I
 leaue þ matt to þ iudgement of other, & the for
 a further pꝛoſe though þ ſaid þſcription of not
 paying tiḡs for trees of xx. yere & aboue, were
 not good, yet þ þ of corne & graſſe ſhould be good,
 ſoe make this reaſon: they ſay þ there is no tiḡe
 but it is either a pꝛedial tiḡ, a pſonal tiḡ, or a *pꝛedial*
 mixt tiḡ, & they ſay þ if a tiḡ ſhould be paid of *pſonal*
 trees whē thei be ſo ſold, þ that tiḡ were not a *mixt*
 pꝛedial tiḡe, for þ pꝛedial tiḡe of trees is of ſuch
 trees as bring forth fruits and encrease yerely,
 as appell trees, nut trees, peare trees, & ſuch o-
 ther, wherof þ pꝛedial tiḡe is the appels, nuts,
 peares, & ſuch other fruits as cōe of the yerely,
 & whē the fruits be tiḡed, if the oſwner after ſel
 þ trees, there is no tiḡ due thereby, for n. tiḡes
 may not be paid of one thing, & of thoſe tiḡes þ
 is to ſay, of pꝛedial tiḡes was þ cōmaundemēt
 geuen in þ old laſw to the Jewes, as appeareth
 Leuiti. xxvij. where it is ſaide (Omnes decime
 terre, ſiue de pomis arborum: ſiue de frugibus, domini
 ſunt: & illi ſanctificantur) that is to ſay, al tiḡes
 of þ earth, either of appels of trees, or of grains
 be our Lordes, and to him they be ſanctified,
 and

The lv. Chapter.

and though þ said law speaketh onely of apples
pet it is vnderstand of al maner of frutes. And
because it saith that al the tithes of the earth to
our lordes, therefore calves, lambs, & such other
must also be tithed, & they be called by some me
predial tithes, that is to say, tithes þ cōe of the
grounde, howbeit they cal the only predial me
diate, & they be the same tithes þ in this wozitig
be called mixt tithes, & the other tithes (that is
to say) tithes of apples, & corne, & such other be
called predialles immediate, for they come im
mediatly of the grounde, and so do not mixt ti
thes, as evidently appeareth.

D. But what thinkest thou shalbe the prediall
tithes of althes, elmes, saloswes, alders, & such
other trees as beare no fruits, wherof any pro
fit cometh, why shal not the x. part of the selfe
thing be the tithe thereof if thei be cut down as
wel as it is of corne, & grasse? *S.* For I thinke
that there is to that intent great diuersity be
twene corne, grasse, & trees, and that for diuers
cōsiderations, whereof one is this. The proptie
of corne, & grasse is not to grow ouer one yere, &
if it doe: it wil perish & come to nought, & so the
cutting downe of it, is þ perfection and prefer
uation thereof, & the special cause that any en
crease follosweth of the same. And therefore
the tenth part of the encrease shalbe payed as
a prediall tithe, and there no deduction shalbe
made for the charges of it, and so it is of sheepe
and beastes that must bee taken and killed in
tyme, for else they may pearish and come to
nought: but when trees be felled: that felling
is

is not the perfection of trees, no it causeth not them to encrease but to decay, for most comonly the trees would be better if they might growe still. And therefore upon that that is the cause of the decay & destruction of them, it seemeth there can no predial tithe arise, and some men say that this was the cause why our Lord in the sayde chapter of Levitic. xxv. gave no commaundement to tithe the trees, but the fruits of trees onely. D. It appeareth in Paralapo xxxi. that the Jewes in the time of king Ezechias, offered in the temple all thinges that the grounde brought forth, and that was trees as well as corne and grasse.

S. It appeareth not that they did that by the commaundement of god, and therefore it is like that they did it of their owne devotion and of a favour that they had above their duety, to repairing of the temple, which the king Ezechias had then commaunded to be repaired, so that yett noweth nothing that tithe should be paid for trees, and therefore they say farther, that truse it is, that if a man to the intent he would pay no tithe, would wilfully suffer his corne & grasse to stand still and perish, he should offende conscience thereby, but though he suffer his trees to stand still continually without felling, because he thinketh a tithe would bee asked if hee felled them (so that he do it not of an evil will, of the curate) he offendeth not in conscience, ne he is not bound to restitution therefore, as he should be if it were of corne, and grasse as before appereth. And an other diversity is this: In this case of
Y. i. tithe

the wood, that tith therof would serue to lit-
 tle to that purpose that tithes be paid for, that
 it is not likely that they that made the law for
 payment of tithes intended that any tith should
 be paid for Trees or wood, for spiritual my-
 nisters must of necessity spend daily and weke-
 ly, & therefore the tithes of trees or wood that
 cometh to lesdome would serue to litte to the
 purpose that it should be paid for, that it would
 not helpe them in their necessity, so that if they
 should be bound to trust thereto though it might
 helpe him in whole tyme it should happen to fail,
 yet it should deceiue them that trusted to it in
 the meane tyme, and also should leaue the pa-
 rish without any to minister to them. D. I
 woulde well agree that for Trees that beare
 fruit they should no predial tith be paid when
 they are solde, for the predial tith of them is the
 fruites that come of them, & so there cannot be
 two predialles of one thinge as thou hast said.
 But of other trees that beare no fruit, me thin-
 keth a predial tith should be paid when they
 be solde, and so it appeareth that there ought to
 be by the constitution prouinciall made by the
 reuerend father in God Robert Wichele late
 Archbilhop of Canterbury, where it is sayde &
 declared (that is to say) is of every kinde of trees
 that haue being, in that that they should be cut
 or that be able to be cut, wherof we will saith
 that the possessor of the sayde wooddes be
 compelled by the cesures of the Church to pay
 to the parische church, or mother church a tith
 as a reall or predial tith & so by vertue of a co-
 situ-

stitution p̄prouincial, a p̄redial tith must be paid
of such trees as haue no fruit, for I would well
agre that the said cōstitution p̄prouincial stret-
ched not to trees that beare frutes, though the
words bee generall for al trees, as before appe-
reth. S. I take not the reason why a p̄redial
tithe should not be paid for trees ȳ beare fruite
to bee because two p̄redial tythes cannot bee
paid for one thing, for when the tithe is payde
of Lambes, yet that tithe bee paid of wolles of
the same shepe, for it is paid for an other increse
and so it might be said that the fruit of a tree is
one increse, & the felling an other, but I take ȳ
cause to bee for ȳ two causes before rehearsed, &
also for asmuch as ȳ felling is not properly an
increse of ȳ trees, but a destruction of the trees
as it is said before. And farther I would heare
thy minde vpon the said cōstitution p̄prouinciall
which wil that tithe should be paid for trees by
the possessours of the woode, that if the possel-
sour sell the wood for C. li. and geue the buyer
a certaine time to fell it in, what tithe shall the
possellour pay as long as the woode standeth.
D. I think none for the p̄redial tithe cometh
not til the woode be felled, and a personall tithe
hee cannot pay, no more then if a manne plucke
downe his house and selleth it, or if he sel al his
land, in which cases I agree well hee shall pay
no tithe neither personall nor p̄rediall. S. And
then I put case that the buier selleth ȳ wood a-
gain as it is standing vpon the grounde to ano-
ther for C. li. what tithe shalbe paid then. D.
the ȳ first buier shal pay tithe of ȳ surplusage. ȳ
p. 9. hee.

The 19. Chapter.

he taketh over the C. M. that he paye as a personall tithe. **S.** And then if the seconde buyer after that cut it downe, and sel it when it is cut downe for lesse then her payde, what to the shall then be payde.

D. Then shall he that selleth them pay the tithe for the trees, as a predial tithe.

S. I cannot see how that can be, for he neither hath the trees that the predial tithe should be payde for, if any ought to be payed, nor hee is not possessor of the grounds where the trees grow, and therefore if any predial tithes should be payde, it should be payde eyther by the first possessor, by reason of the wordes of the said collatation provincial, which be p the tithe shall be payde by the possessor of the woode, or by the last buyer, because he hath the trees p should be tithed, & by the first possessor the tithe cannot be payde as a predial, for he cut not them downe, ne they were not cut downe upon his bargaine, and by the last buyer it cannot be payde neither as a predial tithe, for the said collatation saith, that the possessours of the woods should be compelled to pay it. And therefore I suppose that p truth is that in that case no tithe shall be payde, for as to the last seller he shall pay no personall tithe, for he gained nothing as it appeareth before, & no predial tithe shall be payde, for it should be against the saide prescription, & also the cutting downe is the destruction of trees, and not their preservation as is said before.

D. Then takest thou the said collatation to be of smale effect as it seemeth.

S. I take

I take it to be of this effect that of wood above twenty yere it bindeth not, because it is contrary to the common law as to the said prescription that standeth good in the common law, but of wood under xx. yere, whereof tith hath bene accustomed to be paid, the constitution is not against the said prescription, because paying of tith under twenty yere, is not prohibite but suffered by the said statute, howe be it some say that by the very rigour of the common law, tithes shoulde not be paid for wood under xx. yere no more then for above twenty yeres, & that prohibition in that case lieth by the common law notwithstanding because it hath ben suffered to be contrary and that in many places tith hath ben paid thereof: I passe it over, but where tith hath not bene paid of wood under xx. yere I thinke none ought to be paid at this day in lawe nor conscience, but admit it that the said constitution taketh effect for payment of the wood under xx. yere as of a predial tith, yet I cannot see how the tith thereof shoulde be paid by the possessor of the wood if he sel the, but that it shoulde be paid rather by him that hath the tree, for the constitution is, that the tith shall be paid as a real or a predial tith, and that is the x. parte of the same tree as it is of coine, and if a man buy coine upon the ground, the buyer shall pay the tith and not the seller, & so it shoulde seeme to be here, and what the constitution ment to decree the contrarie in tithes of wood I cannot tell, unless the meaning were to induce the owners to pay tithes of great trees when they sell

The ly. Chapter.

tel the to their owne vse which mee thinketh
shoulde be very hard to proue to stand in reaso,
though the said statut had neuer ben made as I
haue laide before. And furthermoze I woulde
here vnder correctio moue one thig, & þis is this,
þas it semeth they þ were at the making of þ
said constitution that knew the said prescripti-
on did not followe the direct order of charite
therein so perfectly as they might haue done,
for when they made the laide constitution pro-
vincial, directly against the sayde prescription,
they set a lawe against custome, and power a-
gainst power, and in maner the spiritualtie a-
gainst the temporality, wherby they might wel
know, that great variace & suit shoulde folloze,
& therefore if they had clerely sene that the said
prescription had bene against conscience they
shoulde first haue moued the king and his coun-
sell & the nobles of the realme to haue assented
to the reformatiõ of that prescription, & not to
make a lawe as it were by authoritie & power
against þ prescription & then to threath the peo-
ple & make the beleue that they were all accur-
sed that kept the said prescriptiõ, or þ maintain
it, & it semeth to stand hardly with conscience to
report so many to stand accursed for folloving
of the said statut and of the said prescription as
there do, and yet to do no more then hath bene
done to bring them out of it. W. We thinketh
that it is not conuenient, þ lay men shoulde ar-
gue the lawes & the decrees or constitutions of
the church, & therefore it were better for them
to geue credence to spirituall rulers that haue
cure

ture of their soules, then to trust to their own
 opinions, & if they woulde do so, then such mat-
 ters shoulde muche the more rather cease, then
 they will do by such reasoninges. S. In that
 that belongeth to the articles of the fayth, I
 thinke the people be bound to beleue the church,
 for the Church gathered together in the holy
 ghost cannot erre in such thinges as belong to
 the Catholike faith, but where the Church
 make any lawes whereby the goodes or posses-
 sions of the people may be bounde, or by thys
 occasion or that may be taken fro the, there the
 people may lawfully reason, whether y^e lawes
 bindeth them or not, for in such lawes y^e Church
 may erre and be deceiued, and deceiue other ey-
 ther for singularitie or for conetice or some o-
 ther cause and for that consideration it pertaineth
 most to them that be lerned in the law of
 the Realme to know such lawes of the church
 as treat of the ordering of lands or goodes, and
 to see whether they may stande with the lawes
 of the realme or not, and therefore it is necessa-
 ry for the to know the lawes of the church, that
 treat of dimes, of executors of testaments, of
 legacies, bastardy, matrimony, and diuers other
 wherein they be bounde to know when the law
 of the church must be followed, & when y^e lawe
 of the realme, wherof because it is not our pur-
 pose to treat, I leaue to speake any more at this
 time, and will resorte againe to speake of tithes,
 wherin Ie me say y^e of Tin, Cole, & Leede, no
 tith should be paid whe they be sold by y^e owner
 of y^e ground, because it is part of the inheritance,

y. iij.

and

The lv. Chapter.

And it is moze rather a destruction of þ inheri-
tance then an encrease: and therefore they say
that if a man take a Tynne worke, & geue the
Lorde the tenth dish accordeinge to the custome
that the Lorde shal pay no tithes of that tenth
dish neither predial nor personal, but if þ other
that taketh the worke haue gaines & aduanti-
tage by the worke, it seemeth that it were not
against reason that he should pay a psonal tith
of his gaines the charges deducted.

D. I pray thee shewe me first what thou ta-
kest for a personal tithe and vpon what ground
parsonal tithes be paid as thou thinkest, so that
one of vs mistake not another therein.

S. I will with good wil, and therefore thou
shalt vnderstand that as I take it: parsonal ti-
thes be not paid for any encrease of the ground,
but for such profite as commeth by the labour
or industrie of the parson, as by buying and sel-
ling and such other, and such personall tithes
as I take it, must be ordered after the custome,
and the church hath not vsed to leaue those ty-
thes of compulsion, but by conscience of the par-
ties, neuerthelesse Raymond saith þ it is good
to pay parsonal tithes or with the assent of the
parson, to distribute them to poore men, or els
to pay a certaine portion for the whole, but as
Innocent saith, where þ custome is that they
should be paid the people be bound to pay them
as wel as prediales, & expences deducted, how-
beit in þ church of England they vse to fue for
such parsonal thithes as well as for prediales
& that is by reason of þ constitution prouincial
that

that was made by Robert Wynchelsey late
Archbishop of Canterbury, by y^e which it was
ordained that personal tithes should be paid of
craftes and merchandise, and of p^r lucre of buy-
ing and selling, and in likewise of carpenters,
Smithes, weavers, dyalors, and all other y^e
worke for hire that they shal pay tithes of their
hire except they wil give any thing certaine to
the use or to the profit of the Church, if it so
please the person, & in an other place the sayde
Archbischoppe saith, that of the p^rsonage of
wodes and such other thinges &c. and of syl-
vinges, crass, bees, doves, and of divers other
thinges there remembred, and of craftes, and of
buying & selling of the profits of divers other
thinges there recited, every man shoulde helpe
satisfie competently to the church, to the which
they be bound to give it of right, no expences
by y^e geving of the said tithes deducible from the
holden but only for the payment of tithes of
craftes & of buying & selling, is by reason of the
said constitutions pronounced sometime since
be taken in the spiritual court for personall ti-
thes and thereof many are do minnable, because
deductions many times must be referred to the
conscience of the parties. And they marvaile al-
so why a lawe shoulde be made in this case
for paying of personall tithes more then there is
in other countries. And here I shoulde gladly
move the farther in one thinge concerninge
such personall tithes to knowe the mind thereon
and that is, if a man geve to another a horse
he selleth that horse for a certaine summe, shall
he

The Iy. Chapter.

he pay any tith of that summe. D. What thin-
 kest thou therein. S. I thinke that he shal pay
 no tithe, for there as I take it the profite com-
 meth not to him by his owne industry, but by y
 gift of an other, & as I take it personall tithes
 bee not paide for every profite or aduantage
 that commeth newly to a man, except it come
 by his owne industry or labour, and so it doeth
 not here. And also if he should pay tithe of that
 he sold the horse for: he should pay tithe for the
 very whole value of the thing. And as I take
 it: the parsonal tithes for buyinge and sellinge
 shall neuer be paide for the value of the thinge
 but for the cleare gaines of the thinge, & there-
 fore I take the cases before rehearsed, where a
 man selleth his land, or pulleth downe a house
 & selleth the stufte, that he shoulde there pay no
 tithe, that it is there to be vnderstande that he
 hath that lande or house by gifte or by discent,
 for if a man buy lande, or buy timber & stufte of
 a house and sel it for a gain, I suppose that he
 should pay a parsonall tithe for that gaine, and
 this case is not like to a fee or annuity grañted
 for counsaile, where the whole fee shalbe tithed,
 for the charges deduct or some certaine summe
 by agreement, for there the whole fee com-
 meth for his counsaile which is by his owne in-
 dustrie. But in the other case it is not so, and
 the same reason as for the parsonal tithe might
 be made of trees when they discent or be geuen
 to any man and he selleth them to another that
 he shal pay no parsonal tithe. D. We thinke
 if the horse amend in his keeping, & then he sel

the

the horse, that then the tithe shalbe paid of that
 yf the horse hath encreased in value after yf gyft
 & so it may be of trees yf he shal pay tith of that,
 that the trees may be amended after the gift or
 discent. **S.** Then the tith must be the x. parte
 of the encrease the expences deduct, & the of trees
 the charges must also be deduct, for it is then a
 psonal tithe, & there is no tree that is so much
 worth as it hath hurt yf ground by the growing
 therefore there can no psonal tith be paid by the
 owner of the ground when he selleth the, though
 they haue encreased in this time. **N**evertheles
 I wil speake no farther of that matter at this
 time, but wil shew thee yf **Tinne**, **Lede**, **cole**,
 or trees be sold, yf a mixt tith canot grow ther-
 by, for a mixt tith is pperly of **Calves**, **Lābes**,
 pigges, & such other that come part of yf ground
 that they be fed of, & part of yf keeping, industry
 and ouersight of the owners as it is sayde be-
 fore, but **Tinne**, **Lede**, and **Cole** are part of the
 ground and of the free holde, and trees growe of
 themselves, & be also annexed to the frēhold &
 will grow of them selues, & also the mixt tithe
 must be paid verely at certaine times appoin-
 ted by the law or by custome of yf countrey, but
 it may happen that **Tinne**, **Lede**, **Cole**, & trees
 shal not be sold nor take in many yerres, & so it
 semeth it cannot be any mixt tithes, & these be
 some of yf reasons which they that would main-
 taine that statute and prescription to be good,
 make, to proue their intent as they thinke. **W.**
 what thinke they if a mā sel the toppes of hys
 wood, whether any tith ought there to be paid
S.

The lv. Chapter.

S. They thinke al one lasse of the trees and of the loppes.

D. And if he be to fell the loppes once in xij. or xvi. yeare, what hold they then. **S.** That is all one.

D. And what is their reason why tithe ought not to be payde there as well as for wood vnder xx. yeare. **S.** For they say that

the loppes are to be taken of the same condition as the trees be, what time so ever they be felled and that no custome wil serue in þ case against the statute, no more then it shoulde doe of great trees.

D. And what holde they of the barke of the trees? **S.** Therein I haue not hearde their opinions, but it seemeth to be one lasse wth the loppes.

D. I perceiue well by that thou hast said before, þ thy minde is that if a whole countrey prescribe to be quite of tithes, of trees corne, & grasse, or of any other tithes, that that prescription is good, so that the spiritual ministers haue sufficiēt beside to liue vpon, doest thou not meane so? **S.** Yes hereby.

D. And then I would know thy mind if any man contrary to that prescription were sued in the spiritual court for corne & grasse, or any other tithes whether a prohibition shoulde lye in that case as it did after thy mind before the said statute, where a man was sued in the spiritual court for tithe wood.

S. I thinke nay. **D.** And why not there as well as it did where a mā was sued for the tithe wood. **S.** For as I take it, there is great diuersitie betwene the cases & þ for this cause there is a maxime, in þ lasse of England &

if any

if any suite be taken in y^e spiritual court, where
 by any goods or landes might bee reconered,
 which after the grounds of y^e lawe of the realme
 ought not to be sued there, though percase the
 kings court shal hold no ple thereof, that yet a
 prohibition shoulde lie, and after when it hadde
 continued long that no tithes were paid of wood
 because of y^e saide prohibition, and that after by
 processe of time some curats beganne to aske ti-
 thes of wood contrary to the lawe and contra-
 ry to the said prescription, so that variaunce be-
 gan to rise between curats and there parishners
 in that behalfe, the for appealing of the said va-
 riance, the said statute was made, and that as
 it seemeth more at the calling on of y^e spiritual-
 ty then of temporality, for the statute doth not
 expressely graunt that the prohibition in y^e case
 of tith wood should lye so largely as some saye
 it lay by the law, how be it, it doth not restrain
 the common lawe therein, as it appeareth euy-
 dently by the words of the statute, and so after
 some men it appereth before the statute, and al-
 so after the statute, as I haue touched beefore
 that y^e spiritual court ought not in that case to
 haue made any processe for tith wood: & there-
 fore if they did, a prohibition lay by the commo
 lawe: & like lawe is if the spiritual court make
 processe upon such a legacy, as by the law of the
 realme is boyde. As if a man lequeth to one, an
 other mans horse, and the spiritual court
 thereupon maketh processe to execute that lega-
 cy, there a prohibition lyeth, for it appeareth es-
 uidently in y^e libel, if all the truth appeare in the
 libel

The lv. Chapter.

libel that in the law of the Realme, the legacy is boide to all intentes. And that he to whom the legacy is made, shall neither haue the horse, nor the value of the horse. And in likewise if a man sel his land for C. li. and he is sued after in the spiritual court for tythe of the saide C. li. There a prohibition shall lie, for it appeareth in that case openly in the libel, that no tith ought to be paid, and that the spiritual law ought not in that case to make any processe, whereby the goods of him that solde the land might bee taken fro him against the law of the Realme, and vpon this ground it is, that if a man were sued in the spiritual court nowe with the statute, for a mortuarie that a prohibition should lie, for it appereth in the libel, that with the statute there ought no fine to be taken for mortuaries, and p same law is if any fine were taken in the spiritual court for a newe duety p is of late taken in some places vpon leases of personages, and byearages, which is called a dynussion noble, for it appeareth evidently in the libel, if any be made thereupon p no such processe ought by p law of the realme to be made in that behalfe, but in the case of tith the coine, or grasse, or such other things, wherein thou hast desired to knowe my minde, there appeareth nothing in the libel, but that the fine thereof of right appertaineth to spiritual law, and so for any thinge that appeareth, the party may bee helpen in the spiritual court by the prescription, and if p case were so far put, p in the spiritual court they would not allow the said prescription, yet I thinke no prohibition

hibition should lie, for though y spiritual iudges in a spiritual matt deny the parties of iustice, yet the kinges lawes cannot reforme that, but must remit it to their conscience. But if there were some remedy provided in that case it were well done, for some saye that in the spirituall court they wil admit no ple against tithes. And also if a composition were made by assent of the parrone and also of y ordinary betwene a parson and one of his parishners, that y person and his successores should haue for a certaine groundes so many quarters of come for his tithes yerely, & after contrary to the composition the person in the spiritual courte alayeth y tithes as they say, that in this case no prohibition should lie, ne yet though the case were further put y the composition were pleaded in the court and were disallowed, but al resteth in the conscience of y Judges spiritual as is said before, howbeit, because some be of opinion y a prohibition should lie in this last case, wherefore I will referre it to the iudgement of other, but in the case of the prescription before rehearsed, I take it for y clearer case, that no prohibition shal lie, as I haue said before. And I beseech our Lorde that this matt & such other like thereto, may bee so charitably looked vpon, that there be not hereafter such diuisions, ne such diuersities of oppinions therein as hath beene in time paste, whereby hath folloved great costes and charges to many persons in this Realme, and that hath moued mee to speake so farre in thys Chapter, and in diuers other Chapters of this present booke

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For prohibition
Exhibition

The ly. Chapter.

booke as I haue done, not intending thereby to
 geue occasion to any person to withhold his tithes
 that of right ought to be paid, ne to alter y^e por-
 tion therein before accustomed, but that as mee
 thinketh they ought to be claimed by y^e same ti-
 tle as they ought to be payde, & by none other, &
 that it may also somewhat appeare, that y^e sayde
 statute of y^e 1st of Edward the third was well &
 lawfully made, & hypon a good reasonable con-
 sideration, & that y^e said prescription is good also
 so that no man was in any danger of excomu-
 nication for the making of the saide statute, nor
 yet is not for the obseruing thereof, ne yet of y^e
 said prescription as it is noted by some persons
 that there should bee. And thus I comit the
 vnto our Lord, who euer haue both the & mee
 in his blessed keeping euerslastingly. Amen.

finis.

Here endeth the second dialogue in Englysh
 with newe Additions, betwixte a Doce-
 tor, and a Student in the lawes
 of England. And here
 after folloiweth the
 Table.

Table
 This Table sheweth the order of the
 booke, and the places where the
 lawes are to be found. It is
 divided into three parts, the first
 containing the names of the
 lawes, the second the places
 where they are to be found, and
 the third the names of the
 authors of the same.

¶ Hereafter followeth the table to
the first Booke with certaine additions newly
added thereto, and ouer all the chapters &
questions which bee newly added,
yee shall finde entituled this
sword Addition, both in
the table, & also in
the booke.



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Addition

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first Booke.

¶ Here beginneth the Table to
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FINIS.

¶ Londini in Aedibus Richardi
Tottelli Anno 1580.

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